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RECORD, CASE No. 13,515.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 341. 34

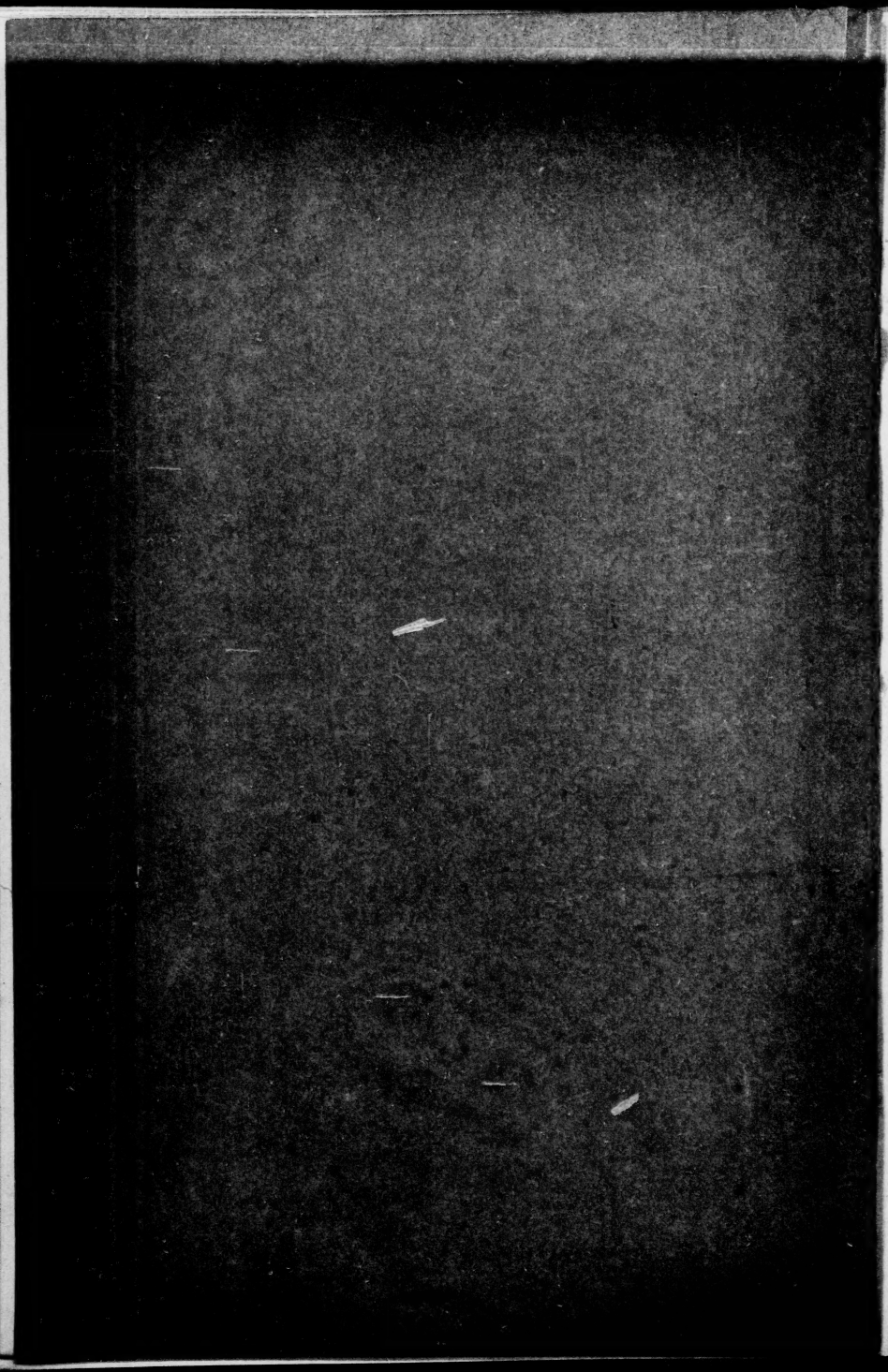
JOHN L. HARDEE, APPELLANT,

vs.

BENJAMIN J. WILSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED MARCH 19, 1889.



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INDEX.

	Original.	Print.
Caption	1	1
Transcript from State court	2	1
Petition for removal	2	1
Bond for removal	6	3
Answer of John L. Hardee	10	4
Statement of account	19	8
Bill of complaint	25	12
Exhibit A—Deed of James M. Minor to James M. Minor, trustee, March 18, 1876	39	17
B—Deed of James M. Minor *et ux.* to John L. Hardee, February 6, 1877	42	19
C—Promissory note from Riddle *et al.* to B. J. Wilson, February 7, 1871	44	19
D—Writ of execution	45	20
Subpœna	46	20
Sheriff's return	47	20
Copy of bill of complaint and exhibits	48	21
Subpœna	70	29
Sheriff's return	71	29
Clerk's certificate	72	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1892.

	Original.	Print.
Order appointing examiner to take testimony	74	30
Answer of James M. Minor *et ux.*	75	31
Exhibit A—Agreement between James M. Minor and John L. Hardee, January 5, 1876	80	33
Replication to answer of Minor *et ux.*	84	34
Order enlarging time to take testimony	86	35
Order enlarging time to take testimony	87	35
Order as to withdrawal of original papers	88	36
Interlocutory decree	89	36
Master's report	91	37
Complainant's exceptions to master's report	94	39
Appearance of Chas. N. West as solicitor for Hardee	97	40
Order setting aside master's report and for another reference	98	40
Master's report	99	41
Defendant Hardee's exceptions to master's report	103	42
Final decree	105	43
Order granting appeal of John L. Hardee	107	44
Bond on appeal	108	44
Evidence for complainant	110	45
Commission to take testimony	110	45
Interrogatories	114	47
Cross-interrogatories	122	50
Testimony of Irwin L. Adams	128	52
W. Jasper Henderson	133	54
H. K. Newsome	142	57
W. V. Tanner	148	59
Ira Walden	153	61
J. Ben. Wilson	155	61
Evidence for defendants	161	64
Interrogatories	161	64
Cross-interrogatories	164	65
Testimony of James M. Minor	169	66
Mrs. Anna E. Minor	177	69
Exhibit A—Agreement between James M. Minor and John L. Hardee, January 5, 1876	179	70
Promissory notes of James M. Minor, May 20, 1876, and July 6, 1876	181	71
Exhibit B—Statement of accounts of James M. Minor with Hardee, Sons & Co.	183	72
Lease from John L. Hardee to W. R. Thigpen and James M. Minor, April 14, 1879	188	76
Lease from John L. Hardee to Green B. Thigpen and James M. Minor, January 20, 1882	193	77
Report of master and testimony taken before him	198	79
Testimony of John M. Bryan	201	80
James M. Minor	206	82
A. H. Trawick	225	89
Exhibits to Trawick's testimony	230	91
Testimony of B. J. Wilson	235	93
John L. Hardee	242	96
Copy of lease from Hardee to Minor and Thigpen, April 14, 1879	255	101
Letters from Hardee to Minor	259	102
Statement of accounts	272	108

	Original.	Print.
Evidence before W. G. Robson, special commissioner	288	116
Testimony of A. H. Trawick	288	116
Miss Emma Salter	298	120
A. H. Trawick	302	122
William Holmes	302	122
Maj. M. Newman	308	125
Wm. R. Thigpen	312	126
Exhibits to Trawick's testimony	320	130
Commissioner's certificate	327	134
Further evidence before the master	328	135
Testimony of John L. Hardee	329	135
Clerk's certificate	335	139

1 In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia, Holding Sessions at Savannah, November Term, 1887.

Honorable Don A. Pardee, judge presiding.

B. J. Wilson, Complainant, *vs.* James M. Minor and John L. Hardee, Defendants.	No. 150. In Equity. Bill, &c. Removed Case.

Be it remembered that in the above entitled and numbered cause, begun in the circuit court of the United States for the eastern division of the southern district of Georgia, in the fifth circuit, holding sessions at Savannah, by bill of complaint filed on the 13th day of November, A. D. 1880, wherein decree was rendered on the 12th day of December, A. D. 1887, the following proceedings were had, to wit:

2 Georgia, *Washington County.*

In the Superior Court of said County, September Term, 1879.

B. J. Wilson, Complainant, *vs.* James M. Minor, Annie E. Minor, and John L. Hardee.	Bill for Discovery, Relief, &c.

To the Honorable H. V. Johnson, judge of the middle judicial district of said State:

The petition of B. J. Wilson, of Atlanta, in said State, respectfully showeth that your petitioner is the complainant in this suit, and that the same was brought by your petitioner against said James M. Minor, Annie E. Minor, and John L. Hardee, the respondent-, on or about the first day of August, 1879, in the superior court of said county, to be — on the first Monday in September, 1879, in and for said county.

And your petitioner further respectfully shows that your petitioner, as complainant in said bill, claims therein a debt
3 against said James M. Minor, one of said respondents, the sum of two thousand nine hundred dollars as principal, and is endeavoring to subject to payment of said debt, which is in judgment, a tract of land in said county which was conveyed by said James M. and Annie E. Minor to said John L. Hardee, one of said respondents, and which said tract of land is of the value of four thousand dollars, and that the matter in dispute in this suit, therefore, exceeds the value and sum of five hundred dollars, exclusive of costs; and your petitioner further respectfully shows that this suit is brought by your petitioner against said respondents to subject a tract of land in said county to a judgment in his favor against

said J. M. Minor, which said tract of land your petitioner alleges was conveyed by said James M. Minor and Annie E. Minor to said John L. Hardee to delay, hinder, and defraud your petitioner and the other creditors of said James M. Minor in the collection of their debts against him, and that your petitioner is and was at the time of bringing this suit an alien—that is to say, a subject of the
4 Queen of Great Britain—and that said respondents are and were at the time of bringing this suit citizens of said State of Georgia; and your petitioner further respectfully shows that this cause has not yet been tried, but that the same is pending for trial, and that the term of the superior court in and for said county at which said cause could be first tried is the next May term of said court, appointed to be held on the 4th Monday in May next, at Sandersville, and that your petitioner desires to remove this suit before the trial thereof into the next circuit court of the United States to be held in the southern district of Georgia, in the fifth circuit, in pursuance of the provisions of law as contained in the act of Congress approved March third, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes."

And your petitioner further respectfully shows that he is ready and willing to give a bond, with good and sufficient surety, for his doing all acts and things required to be done by the said provisions of law upon the removal of a cause into the circuit court
5 of the United States, and he offers and files herewith his bond, executed by V. R. Tommey, of the city of Atlanta, as surety, in the penal sum of five hundred dollars, conditioned that your petitioner shall enter in the next circuit court of the United States to be held in the southern district of Georgia, on the first day of the session of said court, a copy of the record in this suit and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto and shall do all such other appropriate acts as by the said act of Congress approved March 3d, 1875, are required to be done upon the removal of a suit into the United States court as good and sufficient surety according to the provisions of law upon a removal of suit into the United States court.

And your petitioner therefore prays that the said bond may be accepted as good and sufficient surety according to the said provisions of law, and that the said suit may be removed into the
6 next circuit court of the United States to be held in the southern district of Georgia, in the fifth circuit, pursuant to the statute of the United States in such case made and provided, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, &c.

B. J. WILSON, *Petitioner.*

JAS. K. HINES,
Att'y for Petitioner.

Endorsement: In Washington superior court, Georgia. Septem-

ber term, 1879. B. J. Wilson *vs.* James M. Minor, Annie E. Minor, and John L. Hardee. Bill for discovery, relief, &c. Petition to remove into the circuit court of the United States. Filed in office July 23d, 1880. J. M. Northington, cl'k.

Bond.

GEORGIA,
Washington County.

In the Superior Court of said County, September Term, 1879.

B. J. WILSON
vs.
JAMES M. and ANNIE E. MINOR and JOHN L. HARDEE.
} Bill for Discovery, Relief, &c.

7 We, B. J. Wilson, of Atlanta, in the State of Georgia, as principal-, and V. R. Tommey, of Atlanta, in said State, *all* held and firmly bound unto James M. Minor, Annie E. Minor, and John L. Hardee, of said State, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said James M. and Annie E. Minor and John L. Hardee, their successors or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the 30th day of March, 1880.

Whereas a suit was brought, on or about the first day of August, 1879, in the superior court of said county by the said B. J. Wilson against the said James M. and Annie E. Minor and John L. Hardee, and the same is now pending for trial therein and is removeable into the circuit court of the United States for the southern district of Georgia, in the fifth circuit, under the act of Congress approved

8 March third, 1875, entitled "An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;" and whereas the said B. J. Wilson has filed his petition in said superior court for the removal of said suit into the next circuit court of the United States for the southern district of Georgia: Now, therefore, the conditions of the above obligation *is* such that if the above-bounden B. J. Wilson or his legal representatives shall enter or cause to be entered in the circuit court of the United States for the southern district of Georgia on the first day of its stated session next ensuing after the order of the said superior court of said county for the removal of said suit into said circuit court a copy of the record in said suit and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto and shall do or cause to be done such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit into the United States court, then the above obligation to be void; otherwise to remain in full force.

B. J. WILSON. [L. S.]
V. R. TOMMEY. [L. S.]

9 STATE OF GEORGIA, }
County of Fulton. }

V. R. Tommey, the surety in the foregoing obligation named, being duly sworn, deposes and says that he is a resident of the State of Georgia and a householder therein and is worth the sum of five hundred dollars over all his just debts and liabilities and exclusive of property exempted by law from execution.

V. R. TOMMEY.

Sworn to & subscribed before me this 30th day of March, 1880.
EDW. J. McCANDLESS, *Not. Pub.*

STATE OF GEORGIA, }
County of Fulton. }

I certify that on this the 30th day of March, 1880, before me personally appeared B. J. Wilson and V. R. Tommey, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed for the uses and purposes therein mentioned.

EDW. J. McCANDLESS, *Not. Pub.*

Approved.
A. C. PATE,
J. S. C. O. C., Presiding.

10 Endorsement: In Washington superior court, September term, 1880. B. J. Wilson *vs.* James M. Minor, Annie E. Minor, & John L. Hardee. Bill for discovery, relief, &c. Bond to remove suit to circuit court of the United States. Filed in office July 23d, 1880. S. M. Northington, cl'k. J. K. Hines, att'y for petitioner.

Answer of John L. Hardee.

THE STATE OF GEORGIA, }
Washington County. }

In the Superior Court of said County. In Equity.

B. J. WILSON
vs.
JAMES M. MINOR, JOHN L. HARDEE, *et al.* } Bill for Relief, &c.

The answer of John L. Hardee, of the city of Savannah, county of Chatham, in said State.

This defendant, now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors
11 and uncertainties in said complainant's said bill contained, for answer thereto *and* unto so much and such parts as this defendant *as this defendants* is advised is material or necessary to answer, answering, saith that his residence is in the city of Savan-

nah and county of Chatham, in said State; his business that of a commission merchant, and in the course of that business he had much dealing with James M. Minor, running through seven or eight years, going back to perhaps the years 1871 or 1872, in which he was furnishing said J. M. Minor with money, provisions, crop supplies, and guano. Their transactions amounted to considerable amounts during these years; that during the cotton season he had also furnished said Minor with money to buy cotton, Minor shipping the cotton to this respondent and taking the profits, if any, when made; that in the close of the year 1876 J. M. Minor was indebted to me upon a note for four thousand seven hundred dollars, besides an open account; that in the year 1876, when calling upon Minor for settlement of these balances, he said he could not
12 pay and proposed to sell me the land in controversy by absolute deed in satisfaction of my debt, then amounting to about $5,800, fifty-eight hundred dollars, or such sum, besides interest. Finding I could not get the money, I took the deed and delivered up the notes and accounts. The trade made with *us* was *bona fide* and upon full consideration, as before stated, for advances previously made to said J. M. Minor. In order to make my title to the land and premises good, his wife, Mrs. Annie E. Minor, also signed the deed. I do not now remember whether I knew of any trust deed from Minor to himself as trustee for his wife and children, but am pretty certain that that fact was not known to me till the fact was set out in the complainant's bill. Having no knowledge of the affairs of Mrs. Minor, I did not inquire a great deal till informed by him that he could not pay me unless I took the lands in settlement of my demand. I accepted his proposition, and they made me the deed and I delivered up the claims.

I proceed now to answer the specific interrogatories propounded by the complainant:

13 1st. Whether the deed from J. M. Minor and Annie E. Minor to you was not intended only as a security for moneys or other advances made by you to them or either of them, and did you not agree to reconvey said tract of land to said Minor—to said Annie E. or some one else for them or either of them?

1. I answer: The deed to the property from J. M. Minor and Annie E. Minor was made in settlement of advances and indebtedness to me by James M. Minor; said advances made in the year 1876. Mr. Minor was indebted to me for a large amount; supplies, money, guano, & *co.* furnished him. He seemed to be unable to pay the money. I took the land in payment. I told him I did not want the land, and if he could raise the money I would rather he would take the place back. He said he would try to raise the money, and, if he could, would take the place back; but he failed to raise a dollar. After keeping the place about 12 months I sold it to J. R. Thigpen for $6,000.00, which was about what it cost me. The deed from Minor was unconditional and not made to secure a debt, but in satisfaction of a debt. I did not agree to recon-
14 vey to Minors or either of them or any one else for them than is stated above.

2nd. I entered into no agreement in writing, bond for titles whatsoever; simply told Minor he could have the refusal of the place at what it cost me if he wanted it, but I never bound myself to sell to Minor; had the right and privilege to sell to whomsoever I pleased. I simply wanted to show Minor all the favors I could. Nothing was reserved by Minor. It was fully agreed with Minor that, as I had titles to the land, I could sell to whom I choose. He said he was not able to pay me for it, and he agreed to act as my agent and sell the place for me, and said Dr. Cheatham or B. J. Wilson would probably buy it *for* me, and some correspondence was had with these gentlemen on the subject of sale.

3rd. The consideration of the deed from Minors to me was about $5,800.00 indebtedness to me for money, supplies, and guano previously furnished him, which appeared on note and open account.

4th. I paid nothing at the time of the execution of the deed other than a delivery up of all demands I held against Minors.

5th. I had Minor's note for $4,734.00, which, when the
15 deed was executed, I returned to him cancelled, as also what was due upon account. I did not retain copy of the note.

6th. My business is that of commission merchant; have dealt with J. M. Minor for the past seven or eight years; refer to extracts annexed.

7th. J. M. Minor has not paid anything upon the note and account indebtedness, for which the land was taken in payment. He had a running account with me, and the land was taken for balance due on account and the note—debts previously contracted. It is true Minor has shipped me cotton in considerable quantities subsequent to our settlement, some of which was for guano furnished him for sale and some to pay for cotton—money furnished him to buy cotton—but none to be applied to the discharge of this indebtedness which was the balance due — year 1876. After that cotton was sold and proceeds applied, as the abstracts from my books herewith annexed show.

8th. I do not know. Minor made me the deed to pay me what he owed and for which he received full equivalent. I know
16 nothing of any intention to defraud creditors; in fact, did not know that he owed anything besides what was due me.

9th. I did not know of the claim of complainant nor that he had sued it when the deed was made to me.

10th. Denies that Minor or his wife or any one else told me of pending of the suit or that land was subject to the claim or anything of the kind.

11th. Deed was made on the day it bears date—6th Feb'y, 1877.

12th. It is not true. There was no such understanding.

13th. As already stated, Minor has paid up the debt for which the land was taken by the land; there is nothing due me now on that account.

14th. As already stated, I do not know.

15th. I do not know that he was insolvent at that time, when he made the deed.

16th. The deed was made to me in payment of Minor's indebtedness, previously made, to the amount of $5,800.00 principal, though only $4,000.00 was mentioned as consideration on the deed itself.

17th. In general, I can only say the deed was made *bona fide* in payment of a debt; that in 1878 I sold the place to J. R.
17 Thigpen for $6,000.00, making him bond for titles. I received from J. R. Thigpen $1,000.00, and upon his failure to pay balance took the place back and leased it for three years at a stipulated annual rent, with the understanding that J. R. Thigpen can still have it by payment of the purchase-money, giving him preference during the existence of his lease to have the titles made to him upon payment as above stated. Mr. J. M. Minor has no interest in the land only as a subtenant of Thigpen, though he has acted as my agent in paying the taxes on it for me and looking after the protection of the property.

Farther than this this respondent knows not and denies all combination, conspiracy, fraud, or other unfair dealing in the taking title to the land in the payment of his debts, and denies all and all manner of fraudulent purposes or intentions on the part of Minor or his wife or any knowledge of the same being communicated to him by said Minor or his wife or any other person; and this respondent prays he may be hence discharged with his reasonable costs in this behalf so wrongfully sustained.

JOHN L. HARDEE. [SEAL.]

B. D. EVANS,
Sol. for Respondent.

18 You, John L. Hardee, do solemnly swear that what is contained in this your answer to the bill of complainant, as far as concerns your own act or deed, is true of your own knowledge, and that which refers to the act or deed of any other person you believe to be true, so help you God.

Sworn to and subscribed before me this 10th day of M'ch, A. D. 1880.

R. H. JACKSON,
[SEAL.] *U. S. Vice-Consul.*

The foregoing answer endorsed as follows:

In equity. Washington superior court, May term, 1880. B. J. Wilson *versus* James M. Minor, Annie E. Minor, John L. Hardee. Bill for relief. Answer of John L. Hardee.

19 *Statement of Account.*

Mr. James M. Minor — account with N. A. Hardee's Son & Co., Savannah, Ga.

DR.

Date.			Am't.	Total.
1876.				
July	6.	To your note due Dec. 1	$2,100 46	
"	"	" " " Nov. 1	2,633 54	
"	11.	com. for invoice	51 62	
"	18.	sides, &c. "	160 15	
Aug.	3.	tobacco "	44 07	
"	18.	bagging "	51 20	
Oct.	13.	cash, W. W. Oer	66 70	
"	14.	" " "	288 80	
"	24.	" prem. policy	28 89	
Nov.	4.	" Seymour, T. & Co.	150	
"	"	" Newsome	410 30	
"	8.	" Walker & Co.	5 00	
"	25.	int. to date	22 48	
				$6,010 21

CR.

Sept.	30.	By 2 b. c.	93 90	
"	" "	" 3 "	129 40	
Oct.	5.	" 1 "	38 30	
"	" "	" 6 "	208 50	
"	7.	" 3 "	144 90	
"	13.	" 1 "	53 60	
"	19.	" 1 "	36 13	
"	" "	" 6 "	247 60	
"	23.	" 1 "	33 80	
"	26.	" 1 "	41	
"	" "	" 1 "	42 90	
"	" "	" 1 "	38 90	
"	" "	" 2 "	76 60	
"	" "	" 5 "	220 10	

20

Nov.	4.	By 1 b. c.	40 60	
"	" "	" 1 "	41 60	
"	" "	" 2 "	88 30	
"	" "	" 2 "	76 50	
"	25.	" balance due us this date	4,357 58	
				$6,010 21

E. & O. E.
Savannah, Ga., Nov. 25th, '76.

Account—Continued.

DR.

Date.		Amount.	Total.
1877.			
Jan. 24.	To 8 tons guano, at 36	$288 00	
" 25.	" 16 " "	576 00	
" 26.	" 16 " "	576 00	
" 31.	" 20 " "	720 00	
Feb'y 6.	Balance per statement	3,882 30	
			$6,042 30

CR.

Feb'y 6.	By freight	144 00	
" "	Balance due us this day	5,898 30	
			6,042 30

E. & O. E.
Savannah, Ga., Feb'y 6th, '77.

Continued.

DR.

		Am't.	Total.
1878.			
Jan. 1.	To balance	6,378 79	
" 29.	" int. to date	57 34	
			$6,436 13

CR.

Jan. 18.	By cash from Cheatham	600	
" 29.	" balance	5,836 13	
			6,436 13

E. & O. E.
Savannah, Jan. 29th, 1878.

21

Continued.

DR.

Date.		Amount.	Total.
1877.			
Dec. 1.	To balance	7,268 22	
1878.			
	" 1 mule	150	
Jan. 1.	" int.	70 27	
			7,488 49

CR.

Dec. 4.	By 10 b. c.	453 20	
" 10.	" 3 "	118 50	
" 15.	" 1 "	50 40	
" 18.	" 1 "	38 50	
" 20.	" 3 "	124 90	
" 26.	" 1 "	36 70	
" 29.	" 7 "	248 30	

Date.		Amount.	Total.
Dec. 31.	By 1 b. c.	$39 20	
1878.			
Jan. 1.	Balance due us	6,378 79	
			$7,488 49

E. & O. E.
Jan. 1st, 1878.

Continued.

Dr.

		Amount.	Total.
1877.			
Oct. 3.	To balance per statement	8,908 36	
" 22.	" cash prem.	25 89	
Dec. 1.	" interest	56 30	
			$8,990 55

Cr.

Oct. 15.	By 5 b. c.	204 20	
" 18.	" 4 "	194 00	
" 26.	" H. K. N.	230 00	
Nov. 6.	" 4 b. c.	200 40	
" 8.	" 2 "	57 83	
" 15.	" 5 "	213 60	
" 16.	" 1 "	49	
" 17.	" 8 "	390	
22			
Nov. 20.	By 2 b. c.	94 40	
" 21.	" 1 "	45 40	
" 22.	" 1 "	43 50	
Dec. 1.	Balance due us	7,268 22	
			$8,990 55

Dec. 1 ..... 5,165 46
Jan. 1 ..... 2,102 76

E. & O. E.
Savannah, Dec. 1, 1877.

Continued.

1877.			
May 5.	To due us per statement	4,325 92	
Jan. 14.	corn	160	
Oct. 4.	guano note	4,798 80	
" 12.	bagging	101 78	
" "	freight	1 50	
" 14.	acceptance	100 00	
" 17.	cash	100 00	
			$9,588 00

Cr.

May 31.	By cash	469 25	
Sept. 18.	" 2 b. c.	104	
" 21.	" 2 "	101 20	

			Amount.	Total.
Oct.	3.	By interest	$5 19	
"	"	Balance due us	8,908 36	
				$9,588 00

E. & O. E.
Savannah, Oct. 3d, 1877.

23 Continued.

1877.				
Ap'l	9.	To balance per statement	$3,815 71	
"	14.	cash, f'g't on guano	21 60	
"	21.	prem. policy	26 04	
May	5.	corn, 281 b'gs	351 25	
"	"	int. to date	33 35	
				$4,247 95
		Cr.		
May	5.	By cash, H. K. N.	198 80	
"	"	Balance due this day	4,049 15	
				$4,247 95
		To due us, cash (f'g't)	159 96	
		balance	3,889 23	
		int. on ½ bal. to Nov. 1	118 62	
		int. on ½ " Jan. 1	158 15	
				$4,325 92

E. & O. E.
Savannah, Ga., May 5th, 1877.

Please remit the balance due, $159.92, on f'g't that we may cancel the am't on our books.

Recapitulation.

Due us, as above, in cash	159 92		
" " Nov. 1	2,063 24		
" " Jan. 1	2,102 76		
			$4,325 92

Continued.

1876.				
Nov.	28.	To balance per statement	4,357 58	
Dec.	8.	" cash	559 30	
1877.				
	13.	" Newsome	189 74	
Jan.	24.	" f'g't on guano	19 20	
	25.	" " "	38 40	
24				
Jan.	25.	To f'g't on guano	48	
"	31.	" " "	38 40	
Feb'y	6.	" int. to date	104 40	
				5,355 02

CR.

			Amount.	Total.
1876.				
Dec.	4.	By 1 b. c.	37 50	
"	6.	" 5 "	226 30	
"	12.	" 1 "	43 30	
"	"	" 1 "	41 90	
"	14.	" 1 "	29 67	
"	"	" 1 "	39 50	
"	16.	" 2 "	91 80	
"	"	" 3 "	116 00	
"	21.	" 1 "	37 30	
"	"	" 1 "	40 90	
"	"	" 1 "	40 28	
"	"	" 3 "	130 20	
1877.				
Jan.	2.	" 1 "	47 50	
"	"	" 1 "	41 77	
Feb'y	6.	Balance on guano	208	
"	"	By 5 b. c.	261 36	
"	"	" 1 "	39 50	
"	"	Balance due us this day	3,882 30	
				$5,355 02

E. & O. E.
Savannah, Ga., Feb'y 6, 1877.

The foregoing statement of account endorsed: B. J. Wilson *vs.* Jas. M. Minor, Jno. L. Hardee, *et al.* Bill for relief. Answer of John L. Hardee to bill. Filed in office Ap'l 20, 1880. S. M. Northington, cl'k. B. D. Evans.

25 GEORGIA, }
Washington County. }

In the Superior Court of said County, September Term, 1879.

To the Hon. H. V. Johnson, judge of the middle judicial district of Georgia, having jurisdiction in equity:

Humbly complaining, shows unto your honor your orator, B. J. Wilson, that James M. Minor, of said county, on the 18th day of March, 1876, for and in consideration of the love and affection which he bore towards his wife, Annie E. Minor, of said county, executed his deed, in which he conveyed to himself, as trustee for said wife, all that tract or parcel of land lying, situate, and being in the county of Washington and State of Georgia, and containing four hundred and fifty acres, more or less, and bounded on the west by lands of Robert Maxwell, W. V. Tanner, and on the east by lands of A. T. Cheatham, M. D., and W. C. Riddle; to have and to hold the above-mentioned premises to him, said James M. Minor, trustee for said Annie E. Minor, for and during her natural life, and
26 after her death to the children that are now or may be hereafter born to the said James M. Minor by the said Annie E.

Minor living at the time of her death, share and share alike, with full and complete power in said James M. Minor, as such trustee, to manage, protect, and improve said property, to sell the same or any portion thereof by and with the consent of the said Annie E. Minor, under her hand and seal, without any order of court, and reinvest the proceeds in other property on the same trusts. This will more fully appear by reference to a copy of said deed hereto attached, marked "Exhibit A," which your orator prays may be taken as a part of this bill, with the usual leave of reference, as often as may be necessary.

Your orator further shows unto your honor that shortly after the execution of said voluntary deed by said James M. Minor to himself as said trustee, to wit, on the 6th day of February, 1877, said James M. Minor and Annie E. Minor, his wife, for the alleged consideration of four thousand dollars, executed their deed, in which they conveyed to John L. Hardee, of the county of Chatham, in said State, the identical tract of land conveyed and described
27 in *in* said voluntary trust deed, with this exception: that in said deed to said John L. Hardee said trust is alleged to contain only four hundred acres. This will more fully appear by reference to a copy of said deed hereto attached, marked "Exhibit B," which your orator prays may be taken as a part of this bill, with the usual leave of reference as often as may be necessary.

Your orator further shows unto your honor that while said deed from James M. Minor and Annie E. Minor to John L. Hardee purports to be an absolute deed on its face, and to transfer and convey to said John L. Hardee the title to said plantation in fee simple, and while the parties thereto claim this to be the intention and effect of said deed, still your orator believes and so charges that said deed was given to secure the payment of moneys advanced by said John L. Hardee to said James M. Minor, and that said John L. Hardee give his bond to reconvey or agreed to reconvey to said James M. Minor, as such trustee, on his reimbursing said John L. Hardee for said advancements.

Your orator further shows unto your honor that to the
28 September term, 1876, of the superior court of said county he instituted his suit against said James M. Minor on a note given by said James M. Minor, who was known at the time of the execution of said note as James M. Thigpen, and one W. C. Riddle to your orator for twenty-nine hundred dollars, dated February 7th, 1871, and due on the first day of November thereafter, as will more fully appear by reference to a copy of said note hereto attached, marked "Exhibit C," which your orator prays may be taken as a part of this bill.

Your orator further shows unto your honor that at the March term, 1877, of said court your orator obtained judgment against said James M. Minor for the principal of said note, with twelve hundred and thirty-four dollars interest to judgment, and the costs of suit.

Your orator further shows unto your honor that on the 7th day of March, 1877, an execution issued on said judgment, and that on this the 1st day of August, 1879, Reuben Mays, the deputy sheriff

of said county, has returned said *fi. fa.* with an entry thereon that there is no property of said James M. Minor to be found on
29 which to levy the same. This will more fully appear by reference to a copy of said execution hereto attached, marked "Exhibit D," which your orator prays may be taken as a part of this bill.

Your orator further shows unto your honor that he believes, and so charges, that said James M. Minor executed said voluntary trust deed to himself as trustee for his wife with the intention of putting said land beyond the reach of his creditors, and especially with the intention to delay, hinder, and defraud your orator in the collection of this said demand; but as said deed was based on no valuable consideration and was executed after the creation of said indebtedness from said James M. Minor to your orator, your orator submits that said deed is null and void as to your orator's demand.

Your orator further shows unto your honor that after the institution of suit by your orator against said James M. Minor on said note, and just a few days before your orators obtained judgment, said James M. executed said deed to said John L. Hardee; and your orator believes, and so charges, that said deed was made in
30 pursuance of a full understanding and agreement between them and for the express purpose of delaying, hindering, and defrauding your orator in the collection of his said demand.

Your orator further shows unto your honor that he believes, and so charges, that said deed from James M. and Annie E. Minor to John L. Hardee was made without any consideration whatever and for the purpose aforesaid.

Your orator further shows unto your honor that even if the said deed from the Minors to said John L. Hardee was based on a valuable consideration and was a *bona fide* transaction, still your orator is informed, believes, and so charges that said James M. Minor has shipped to said John L. Hardee a large amount of cotton and other valuables sufficient to pay off and discharge all demands of said John L. Hardee against him; and your orator believes, and so charges, that said James M. has fully paid off and discharged the amount to secure which said deed was executed.

Your orator further shows unto your honor that notwithstanding the fact that said James M. Minor has fully paid off said demand as secured by said deed, still said John L. Hardee holds the
31 same as unsatisfied, contriving and conspiring, as your orator believes and charges, with said James M. Minor for the purpose of preventing the creditors of said James M. Minor, and especially your orator, from subjecting said place to the payment of their and his demands.

Your orator further shows unto your honor that said James M. Minor is absolutely bankrupt and insolvent and has no property which your orator can reach with his said execution, unless your orator can subject said plantation.

Your orator further shows unto your honor that said tract of land so conveyed by James M. and Annie E. Minor to John L. Hardee would not bring enough to pay the amount claimed by said John

L. Hardee under said deed and the demand of your orator, but your orator believes that if the true and just amount still due and unpaid from said Minor to said Hardee could be fixed and ascertained said land would bring enough to pay off the balance, if any, due by said Minor to said Hardee under said deed and to discharge a large portion, if not all, of your orator's demand.

32 Your orator further shows unto your honor that he hereby tenders to said John L. Hardee the amount fixed and ascertained to be due by said Minor to him under said deed by the decree of this court. Your orator further shows unto your honor that he has requested said James M. Minor and said John L. Hardee to inform your orator how said matter stands in reference to said deed, on what consideration said deed was based, and what amount — said Minor was due to said Hardee on the claim secured by said deed and what interest said Hardee had in said land; and your orator has frequently requested said James M. Minor to come to a settlement with him and to pay his demand, but now so it is, may it please your honor, the said James M. Minor and John L. Hardee, combining and confederating together and with divers persons at present to your orator unknown, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orator in the premises, absolutely refuse to comply with such request.

33 And the defendants sometimes allege and pretend that said defendant John L. Hardee purchased said land absolutely for four thousand dollars and took the absolute title to said tract of land in himself, and at other times they allege and pretend that said John L. Hardee advanced four thousand dollars to said James M. Minor and took said absolute deed to secure himself, with an agreement to reconvey on being reimbursed, and that said James M. Minor has not reimbursed said Hardee or paid him any amount on said demand, when your orator charges the contrary thereof to be the truth, and says that said deed, if based on any consideration, was only given to secure money advanced by said Hardee, and that said Hardee has paid off or very nearly so.

All which actings, doings, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relieveable, waiving all discovery of the defendants James M. Minor

34 and Annie E. Minor and the said other defendants when discovered, to the end, therefore, that the said John L. Hardee, defendant, may, if he can, show, if he can, why your orator should not have the relief hereby prayed, and may, upon his corporal oath and according to the best and utmost of his knowledge, rememberance, information, and belief, full, true, direct, and perfect answer make to the interrogatories hereinafter set forth—that is to say:

1. Whether the deed from James M. Minor and Annie E. Minor

to you was not intended only as a security *to* moneys or other advances made by you to them or either of them, and did you not agree to reconvey said tract of land to said James M. Minor as such trustee or individually or to said Annie E. Minor or to some one for them or either of them?

2. Did you give bond for titles to them or either of them conditioned to reconvey on being paid the amount advanced by you, or did you enter into any agreement to reconvey to them or either of them or to any one else on being reimbursed, and in whose
35 possession is said bond for titles or said agreement, if in writing?

3. What was the consideration of said deed from James M. Minor & Annie E. Minor to you?

4. How much money did you pay to said James M. Minor and Annie E. Minor when they executed said deed to you?

5. Did they or either of them give you a note at any time for the amount so paid or advanced by you? If so, attach a copy of said note, with all credits or entries thereon, to your answer.

6. What is your occupation, and for what years have you had dealings with said James M. Minor? Annex to your answer abstracts from your books showing your dealings with said James M. Minor for the years 1876, 1877, 1878, and 1879.

7. What amount has said James M. Minor paid you on said four thousand dollars, and whether it is not true that said James M. Minor, directly or indirectly, has shipped you large amounts of cotton to be applied to the discharge of the indebtedness to secure which said deed was made? If you state he has made payments, state how much he has paid on said demand.

36 8. Whether it is not true that said James M. and Annie E. Minor made said deed to you to prevent the creditors of said James M. from subjecting said tract of land to their demands.

9. Whether it is not true that you knew of the claim of complainant, and that suit had been instituted thereon when the Minors made said deed to you.

10. Whether it is not true that said James M. Minor — to you that said suit was pending, and that judgment would be obtained at the March term, 1877, of the superior court of said county against him, and that said tract of land would be subject to said judgment unless he made said deed to you.

11. Whether it is not true that the deed from James M. and Annie Minor — to you the day it purports to be dated, to wit, the 6th day of February, 1877.

12. Whether it is not true that it was the understanding between you and the said Minor that you would take the said deed to save said property from the creditors of said Minor and especially from complainant.

37 13. What amount is still due by said James M. Minor to you on said demand so secured by said deed?

14. Whether it is not true that complainant recovered judgment against said James M. Minor on the 7th day of March, 1877, for the

principal sum of twenty-nine hundred dollars and twelve hundred and thirty-four dollars interest to judgment.

15. Whether it is not true that said James M. Minor was absolutely insolvent at the time of the execution of said deed to you.

16. Whether it is not true that said James M. and Annie E. Minor made said deed to you to secure the individual indebtedness of said Minor to you or for moneys advanced by you to said James M. Minor.

17. You will answer all the charges made against you in complainant's bill just as if you were specially interrogated thereto.

And that your orator may be at liberty to redeem said land, and that the said John L. Hardee, on your orator's paying to him what shall appear to be due for principal and interest on said demand so secured by said deed, which your orator hereby offers to pay,
38 may therefore be ordered to transfer, assign, and convey to your orator the said plantation free from all encumbrances done by *by* him or any persons by, from, or under him; or if this honorable court shall hold that your orator is not entitled to this relief, then your orator prays that said tract of land so embraced in said deed be sold under the decree of this honorable court and, after paying what may appear to be due to said John L. Hardee for his principal and interest on said demand so secured by said deed, then the balance of the proceeds of the sale thereof be applied to the execution of your orator, and that your orator may have such further and other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

And may it please your honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the said James M. Minor, Annie E. Minor, and John L. Hardee, defendants, commanding them, on a certain day therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular
39 the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them.

And your orator, *will* in duty bound, will ever pray, &c.

JAMES K. HINES,
Sol. for Compl't.

"EXHIBIT A."

STATE OF GEORGIA, } *ss:*
Washington County, }

This indenture, made the 18th day of March, A. D. 1876, between James M. Minor, of Washington county and State of Georgia, of the first part, and James M. Minor, trustee for Annie E. Minor, wife of the said James M. Minor, *in* the second part, of the county of Washington, State of Georgia, witnesseth:

That the said James M. Minor, for and in consideration of the love and affection which he, the said James M. Minor, bears towards the said Annie E. Minor, wife of the said James M. Minor, as well

as for and in consideration of the sum of ten dollars in hand
40 well and truly paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, and conveyed, and by these presents doth grant, bargain, sell, alien-, and convey, unto the said James M. Minor, trustee as aforesaid, all that tract or parcel of land situate, lying, and being in the county of Washington and State of Georgia and containing four hundred and fifty acres, more or less, and bounded on the west by lands of Robert Maxwell and W. V. Tanner and on the north by lands of the said W. V. Tanner and on the east by lands of A. T. Cheatham, M. D. and W. C. Riddle; to have and to hold the above-mentioned premises to James M. Minor, trustee of Annie E. Minor, for and during her natural life, and after her death to the children that are now or may hereafter be born*ed* to the said James M. Minor living at the time of her death, share and share alike. The said James M. Minor, trustee as aforesaid, shall have full and complete power to manage, protect, and improve the said property, to sell the same or any portion thereof and invest the proceeds thereof arising from
41 the sale of the said property in other property without an order of the court for that purpose by and with the consent in writing of the said Annie E. Minor *and* her hand and seal, subject to the above-described trust, whenever the said James M. Minor, trustee as aforesaid, shall deem it most advisable for the interest of the said trust estate, and the said James M. Minor, trustee, shall the said premises to James M. Minor, trustee as aforesaid, forever warrant and forever defend by virtue of these presents.

In witness whereof I, the said James M. Minor, hath herewith set my hand and affixed my seal this the day and year above written.

JAMES M. MINOR. [L. S.]

Signed, sealed, and delivered in presence of—
W. R. THIGPEN.
J. L. MYERS.

GEORGIA,
Washington County.

Personally appeared before me W. R. Thigpen, who, being duly sworn, deposes and says that he saw James M. Minor sign the
42 within instrument for the purposes therein mentioned, and that he saw J. L. Myers sign the same as a witness, and that he did it likewise.

WM. R. THIGPEN.

Sworn to and subscribed before me this July 25th, 1876.
S. M. NORTHINGTON, *Clk.*

Recorded July 25, 1876.
S. M. NORTHINGTON, *Clerk.*

EXHIBIT "B."

STATE OF GEORGIA,
Washington County.

This indenture, made the 6th day of February, A. D. 1877, and in the 101st year of the Independence of the United States of America, between James M. Minor and Annie E. Minor, of the county of Washington, of the one part, and John L. Hardee, of the county of Chatham, of the other part, witnesseth: That the said James M. and Annie E. Minor, for and in consideration of the sum of (4,000) four thousand dollars in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby
43 acknowledged, have by these presents granted, sold, aliened, conveyed, and confirmed unto the said John L. Hardee, his heirs and assigns, all of that certain tract of land lying and being in the county of Washington and said State on the C. R. road, adjoining lands of the estate of R. Maxwell, W. V. Tanner, B. J. Wilson, and others, containing four hundred acres of land; to have and to hold the said granted premises to the said John L. Hardee, with all the rights and appurtenances thereto appertaining, to the only proper use & benefit of him, the said John L. Hardee, his heirs, executors, administrators, and assigns, in fee simple; and the said James M. Minor and Annie E. Minor the said bargained four hundred acres of land and premises unto the said John L. Hardee, his heirs, executors, administrators, and assigns, against the said James M. Minor and Annie E. Minor, their heirs, executors, administrators, and assigns, and against all and every *of the* person or persons will warrant and forever defend by virtue of these presents.

In witness whereof the said James M. Minor and Annie E.
44 Minor have hereunto set their hands, affixed their seals, and delivered these the day and year above written.

JAMES M. MINOR. [L. S.]
ANNIE E. MINOR. [L. S.]

Signed, sealed, & delivered in presence of us—
W. G. BRYAN,
J. G. WHIDDEN,
N. P. & ex Officio J. R.

Recorded M'ch 29th, 1887.

S. M. NORTHINGTON, *Clk.*

EXHIBIT C.

$2,900.00. SANDERSVILLE, GA., *Feb'y 7th*, 1871.

By the first day of November next we promise to pay B. J. Wilson or bearer twenty-nine hundred dollars, with interest from date, at either bank in the city of Savannah, Ga., value received.

(Signed) W. C. RIDDLE.
J. M. THIGPEN.

45 EXHIBIT D.

GEORGIA,
Washington County.

To all and singular the sheriff of said State, Greeting:

We command you that of the goods and chattels, lands and tenements, of James M. Minor you cause to be made the sum of twenty-nine hundred dollars, principal, and the further sum of twelve hundred and thirty-four dollars, interest *of* to the 7th day of March, 1877, and also the further sum of nine dollars and fifty cents, for costs, with interest on the principal sum from the 7th day of March, 1877, which B. J. Wilson lately, in our superior court for said county, recovered against James M. Minor for principal, interest, and cost, and that you have the said sums of money before the judge of said court on the first Monday in September next, to render to the said B. J. Wilson for principal, interest, and costs aforesaid; and have you then and there this writ.

Witness the Hon. H. V. Johnson, judge of said court, this 7 May, 1877.

S. M. NORTHINGTON, *Clerk.*

46 No property to be found to levy this *fi. fa.* upon this August 1st, 1879.

REUBEN MAYS,
Deputy Sheriff.

The defendant John L. Hardee is required to answer the interrogatories in the foregoing bill of complaint, numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, & 16, the complainant especially waiving all discovery of the other defendants thereto.

JAMES K. HINES,
Sol. for Complainant.

GEORGIA,
Washington County.

In the Superior Court of said County, September Term, 1879.

B. J. WILSON
vs.
JAMES M. & ANNIE E. MINOR, JOHN L. HARDEE, Respondents.
} Bill for Relief, Discovery, &c.

To the defendants in the above cause:

47 For certain causes made known to us by the bill of complaint of B. J. Wilson for discovery and relief, filed in the clerk's office of the superior court of said county, on the chancery side of said court, in which said B. J. Wilson is complainant and you are defendants, we command you that, laying all other business aside, *that* you be and appear before us, at our superior court to be held in and for said county on the first Monday in September next, to answer to all such matters and things as then and

there shall be charged against you, and to stand to and abide such further order and decree as may be had in the premises.

Witness the Honorable H. V. Johnson, judge of said court, this the 1st day of August, 1879.

S. M. NORTHINGTON, *Clerk.*

STATE OF GEORGIA, }
Chatham County. }

SHERIFF'S OFFICE, *Aug. 6th*, 1879.

I have this day served a copy of this bill for relief by leaving it at the most notorious place of business of John L. Hardee, he being out of the State and in Europe.

The return of—

THOMAS DOONAN,
Deputy Sheriff, Chatham County, Ga.

48 Endorsement: In Washington superior court, September term. B. J. Wilson *vs.* James M. Minor, John L. Hardee, *et al.* Bill for relief. Original filed in office this August 1st, 1879. S. M. Northington, cl'k. James K. Hines, sol. for comp't.

GEORGIA, }
Washington County. }

In the Superior Court of said County, September Term, 1879.

To the Hon. H. V. Johnson, judge of the middle judicial circuit of said State, having jurisdiction in equity:

Humbly complaining, shows unto your honor your orator, B. J. Wilson, that James M. Minor, of said county, on the 18th day of March, 1876, for and in consideration of the love and affection which he bore towards his wife, Annie E. Minor, of said county, executed his deed, in which he conveyed to himself, as trustee for his said wife, all that tract or parcel of land situate, lying, and being in the county of Washington and State of Georgia, and con-
49 taining four hundred and fifty acres, more or less, and bounded on the west by the lands of Robert Maxwell, W. V. Tanner, and on the north by the lands of the said W. V. Tanner, and on the east by lands of A. T. Cheatham, M. D. and W. C. Riddle; to have and to hold the above-mentioned premises to him, said James M. Minor, trustee for said Annie E. Minor, for and during her natural life, and after her death to the children that are now or may hereafter be born to the said James M. Minor by the said Annie E. Minor, living at the time of her death, share and share alike, with full and complete power in said James M. Minor, as such trustee, to manage, protect, and improve said property, to sell the same or any portion thereof by and with the consent of the said Annie E. Minor under her hand and seal, without any order of court, and reinvest the proceeds in other property on the same trusts.

This will more fully appear by reference to a copy of said deed,

hereto attached, marked Exhibit A, which your orator prays
50 may be taken as a part of this bill, with the usual leave of reference as often as may be necessary.

Your orator further shows unto your honor that shortly after the execution of said voluntary deed by said James M. Minor to himself as said trustee, to wit, on the 6th day of February, 1877, said James M. Minor and Annie E., his wife, for the alleged consideration of four thousand dollars, executed their joint deed, in which they conveyed to John L. Hardee, of the county of Chatham, in said State, the identical tract of land conveyed and described in said voluntary trust deed, with this exception: that in said deed to John L. Hardee said tract is alleged to contain only four hundred acres. This will more fully appear by reference to a copy of said deed, hereto attached, marked Exhibit B, which your orator prays may be taken as a part of this bill, with the usual leave of reference as often as may be necessary.

Your orator further shows unto your honor that while said deed from said James M. and Annie E. Minor to said John L.
51 Hardee purports to be an absolute deed on its face and to transfer and convey to said John L. Hardee the title to said plantation in fee simple, and while the parties thereto claim this to be the intention and effect of said deed, still your orator believes and so charges that said deed was given to secure the payment of moneys advanced by said John L. Hardee to said James M. Minor, and that said John L. Hardee gave his bond to reconvey or agreed to reconvey to said James M. Minor, as such trustee, on his reimbursing said John L. Hardee for said advancements.

Your orator further shows unto your honor that *to* the September term, 1876, of the superior court of said county he instituted his suit against said James M. Minor on a note given by said James M. Minor, who was known at the time of the execution of said note as James M. Thigpen, and one W. C. Riddle, to your orator, for twenty-nine hundred dollars, dated February 7th, 1871, and due the 1st day of November thereafter, as will more fully appear by reference to a copy of said note, hereto attached, marked "Exhibit C,"
52 which your orator prays may be taken as a part of this bill.

Your orator further shows unto your honor that at the March term, 1877, of said court your orator obtained judgment against said James M. Minor for the principal of said note, with twelve hundred and thirty-four dollars interest to judgment and the costs of suit.

Your orator further shows unto your honor that on the 7th day of March, 1877, an execution issued on said judgment, and that on this the 1st day of August, 1879, Reuben Mays, the deputy sheriff of said county, has returned said *fi. fa.* with an entry thereon that there is no property of said James M. Minor to be found on which to levy the same. This will more fully appear by reference to a copy of said execution, hereto attached, marked "Exhibit D," which your orator prays may be taken as a part of this bill.

Your orator further shows unto your honor that he believes and so charges that James M. Minor executed said voluntary trust deed

to himself, as trustee for his wife, with the intention of putting
53 said land beyond the reach of his creditors, and especially with the intention to delay, hinder, and defraud your orator in the collection of his said demand; but as said deed was based on no valuable consideration and was executed after the action of said indebtedness from said James M. Minor to your orator, your orator submits that said deed was null and void as to your orator's demand.

Your orator further shows unto your honor that after the institution of suit by your orator against said James M. Minor on said note, and just a few days before your orator obtained judgment, said James M. executed said deed to John L. Hardee, and your orator believes and so charges that said deed was made in pursuance of a full understanding and agreement between them and for the express purpose of delaying, hindering, and defrauding your orator in the collection of his said demand.

Your orator further shows unto your honor that he believes and so charges that said deed from James M. and Annie E. Minor to said John L. Hardee was made without any consideration whatever and for the purpose aforesaid.

54 Your orator further shows unto your honor that even if said deed from the Minors to said John L. Hardee was based on a valuable consideration and was a *bona fide* transaction, still your orator is informed, believes, and so charges that said James M. Minor has shipped to said John L. Hardee a large amount of cotton and other valuables sufficient to pay off and discharge all demands of said John L. Hardee against him; and your orator believes and so charges that said James M. has fully paid off and discharged the amount to secure which said deed was executed.

Your orator further shows unto — honor that notwithstanding the fact that said James M. Minor has fully paid off said demand so secured by said deed, still said John L. Hardee holds the same as unsatisfactory, combining and conspiring, as your orator believes and charges, with said James M. Minor for the purpose of preventing the creditors of said James M., and especially your orators, from subjecting said place to the payment of their and his demands.

55 Your orator further shows unto your honor that said tract of land so conveyed by James M. and Annie E. Minor to said John L. Hardee would not bring enough to pay the amount claimed by said John L. Hardee under said deed and the demand of your orator; but your orator believes that if the true and just amount still due and unpaid from said Minor to said Hardee could be fixed and ascertained, said land would bring enough to pay off the balance, if any, due by said Minor to said Hardee under said deed and to discharge a large portion, if not all, of your orator's demands.

Your orator further shows unto your honor that he has requested said James M. Minor and said John L. Hardee to inform your orator how said matters stand in reference to said deed, on what consideration said deed was based, and what amount — said Minor was due to said Hardee on the claim secured by said deed, and

what interest said Hardee had in said land; and your orator has frequently requested said James M. Minor to come to a settlement with him and to pay his demand; but now so it is, may it
56 please your honor, the said James M. Minor and John L. Hardee, combining and confederating together and with divers persons at present to your orator unknown, whose names when discovered your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orator in the premises, absolutely refuse to comply with such request.

And the defendants sometimes allege and pretend that said defendant, John L. Hardee, purchased said land absolutely for four thousand dollars and took the absolute title to said tract of land in himself, and at other times they allege and pretend that said John L. Hardee advanced four thousand dollars to said James M. Minor and took said absolute deed to secure himself, with an agreement to reconvey on being reimbursed, and that said James M. Minor has not reimbursed said Hardee or paid him any amount on said demand, when your orator charges the contrary thereof to be the truth, and says that said deed, if based on any consideration, was only given to secure moneys advanced by said Hardee, and that
57 said Hardee has been paid off or very nearly so; all which actings and doings and pretenses are contrary to equity and good conscience and *that* to the manifest wrong and injury of your orator in the premises. In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, waiving all discovery of the defendant-, James M. Minor and Annie E. Minor and the said other defendants when discovered, to the end, therefore, that the said John L. Hardee, defendant, may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the interrogatories hereinafter set forth—that is to say:

1. Whether the deed from James M. Minor and Annie E. Minor to you was not intended only as a security for moneys and other advances made by you to them or either of them, and did you not agree to reconvey said tract of land to said James M. Minor
58 as such trustee or individually, or to said Annie E. Minor, or to some one for them or either of them.

2. Did you give bond for titles to them or either of them conditioned to reconvey on being paid the amount advanced by you, or did you enter into any agreement to reconvey to them or either of them or to any one else on being reimbursed, and in whose possession is said bond for titles or said agreement, if in writing?

3. What was the consideration of said deed from James M. and Annie E. Minor to you?

4. How much money did you pay to said James M. Minor and Annie E. Minor when they executed said deed to you?

5. Did they or either of them give you a note at any time for the

amount so paid or advanced by you? If so, attach a copy of said note, with all credits or entries thereon, to your answer.

6. What is your occupation, and for what years you have been dealing with said James M. Minor? Annex to your answer abstract from your books showing your dealings with said James M. Minor for the years 1876, 1877, 1878, & 1879.

59 7. What amounts has said James M. Minor paid you on said four thousand dollars, and whether it is not true that said James M. Minor, directly or indirectly, has shipped you large amounts of cotton, to be applied to the discharge of the indebtedness to secure which said deed was made? If you state that he has made payment, state how much he has paid on said demand.

8. Whether it is not true that said James M. and Annie E. Minor made said deed to you to prevent the creditors of said James M. from subjecting said tract of land to their demand?

9. Whether it is not true that you knew of the claim of complainant, and that suit had been instituted thereon; why the Minors made said deed to you?

10. Whether it is not true that said James M. Minor told you that said suit was pending, and that judgment would be obtained at the March term, 1877, of the superior court of said county against him, and that said tract of land would be subject to said judgment unless he made said deed to you?

—. Whether it is not true that the deed from James H. and
60 Annie E. Minor to you was executed the day it purports to be dated, to wit, the 6th day of February, 1877?

12. Whether it is not true that it was the understanding between you and said Minor that you should take said deed to save said property from the creditors of said Minor, and especially from complainant.

13. What amount is still due by said James M. Minor to you on said demand so secured by said deed?

14. Whether it is not true that complainant recovered judgment against said James M. Minor on the 7th day of March, 1877, for the principal sum of twenty-nine hundred dollars and twelve hundred and thirty-four dollars interest to judgment.

15. Whether it is not true that said James M. Minor was absolutely insolvent at the time of the execution of said deed to you.

16. Whether it is not true that James M. and Annie E. Minor made said deed to you to secure the individual indebtedness of said Minor to you or for moneys advanced by you to said James M. Minor.

17. You will answer all the charges made against you in
61 complainant's bill just as if you *are* especially interrogated thereto; and that your orator may be at liberty to redeem said land, and that the said John L. Hardee, on your orator's paying to him what shall appear to be due for principal and interest on said demand so secured by said deed, which your orator hereby offers to pay, may thereupon be ordered to transfer, assign, and convey to your orator the said plantation free from all encumbrances due by him or any person by, from, or under him.

Or if this honorable court should hold that your orator is not entitled to this relief, then your orator prays that said tract of land so embraced in said deed be sold under the decree of this honorable court, and, after paying what may appear to be due to said John L. Hardee for his principal and interest on said demand so secured by said deed, that the balance of the proceeds of the sale thereof be applied to the execution of your orator.

And that your orator may have such further and other relief in the premises as the nature of the circumstances of this case
62 may require and to this honorable court shall seem meet.

And may it please your honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the said James H. Minor, Annie E. Minor, and John L. Hardee, defendant-, commanding them, on a certain day therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them.

And your orator, as in duty bound, will ever pray, &c.

JAMES K. HINES,
Solicitor for Complainant.

63 "EXHIBIT A."

STATE OF GEORGIA, }
Washington County, } *ss:*

This indenture, made this the 18th day of March, 1876, A. D., between James M. Minor, of Washington county and State of Georgia, of the first part, and James M. Minor, trustee for Annie E. Minor, wife of the said James M. Minor, *in* the second part, of the county of Washington and State of Georgia, witnesseth: That the said James M. Minor, for and in consideration of the love and affection which he, the said Minor, bears towards the said Annie E. Minor, wife of the said James M. Minor, as well as for and in consideration of the sum of ten dollars in hand well and truly paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, and conveyed, and by these presents doth grant, bargain, sell, alien-, and convey, unto the said James M. Minor, trustee as aforesaid, all that tract or parcel of land situate, lying, and being in the county of Washington and State of Georgia
64 and containing four hundred and fifty acres, more or less, and bounded on the west by lands of Robert Maxwell and W. V. Tanner and on the east by lands of A. T. Cheatham, A. D. and W. C. Riddle; to have and to hold the above-mentioned premises to James M. Minor, trustee of Annie E. Minor, for and during her natural life, and after her death to the children that are now or may hereafter be born to the said James M. Minor by the said Annie C. Minor living at the time of her death, share and share alike; the said James M. Minor, trustee as aforesaid, shall have full and complete power to manage, protect, and improve the said property, to sell the same or any portion thereof, and invest the proceeds thereof

arising from the sale of the said property in other property without an order of the court for that purpose by and with the consent in writing of the said Annie C. Minor under her hand and seal, subject to the above-described trust, whenever the said James M. Minor, trustee as aforesaid, shall deem it most advisable for the in-
65 terest of the said trust estate, and the said James M. Minor shall the premises to James M. Minor, trustee as aforesaid, forever warrant and forever defend by virtue of these presents.

In witness whereof I, the said James M. Minor, *that* hereunto set my hand and affixed my seal this the day and year above written.

JAMES M. MINOR. [L. S.]

Signed, sealed, and delivered in presence of—
W. R. THIGPEN.
J. L. MYERS.

GEORGIA, }
Washington County. }

Personally appeared before me Wm. R. Thigpen, who, being duly sworn, deposes and says that he saw James M. Minor sign the within instrument for the purposes therein mentioned, and that he saw J. L. Myers sign the same as a witness, and that he did so likewise.

WM. R. THIGPEN.

Sworn to and subscribed before me this July 25th, 1876.
S. M. NORTHINGTON, *Clerk.*

Recorded July 25th, 1876.
S. M. NORTHINGTON, *Cl'k.*

66 "EXHIBIT B."

STATE OF GEORGIA, }
Washington County. }

This indenture, made the 6th day of February, A. D. 1877, and in the 101st year of the Independence of the United States of America, between James M. Minor and Annie E. Minor, of the county of Washington, of the one part, and John L. Hardee, of the county of Chatham, of the other part, witnesseth:

That the said James M. and Annie E. Minor, for and in consideration of the sum of (4,000) four thousand dollars in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have by these presents granted, sold, aliened, conveyed, and confirmed unto the said John L. Hardee, his heirs and assigns, all of a certain tract of land lying and being in the county of Washington and said State, on the C. R. road, adjoining lands of the estate of R. Maxwell, W. V. Tanner, B. J. Wilson, and others, containing four hundred acres of land; to have and

to hold the said granted premises to the said John L. Hardee,
67 with all the rights and appurtenances thereto appertaining, to the only proper use and benefit of him, the said John L. Hardee, his heirs, executors, administrators, and assigns, in fee simple; and the said James M. Minor and Annie E. Minor the said bargained four hundred acres of land and premises unto the said John L. Hardee, his heirs, executors, administrators, and assigns, against the said James M. Minor and Annie E. Minor, their heirs, executors, administrators, and assigns, and against all and every other person or persons will warrant and forever defend by virtue of these presents.

In witness whereof the said James M. Minor and Annie E. Minor have hereunto set their hands, affixed their seals, and delivered these the day and year above written.

JAMES M. MINOR. [L. S.]
ANNIE E. MINOR. [L. S.]

Signed, sealed, and delivered in presence of us—
W. G. BRYAN.
J. G. WHIDDEN,
N. P. & ex Off. J. P.

Recorded March 29th, 1877.

S. M. NORTHINGTON, *Clk.*

68 $2,900.00. SANDERSVILLE, Ga., *Feb'y 7th*, 1871.

By the first day of November next we promise to pay B. J. Wilson or bearer twenty-nine hundred dollars, with interest from date, at either bank in the city of Savannah, Ga., value received.

(Signed) W. C. RIDDLE.
J. N. THIGPEN.

"EXHIBIT D."

GEORGIA,
Washington County.

To all and singular the sheriff of said State, Greeting:

We command you that of the goods and chattels, land and tenements, of James M. Minor you cause to be made the sum of twenty-nine hundred dollars, principal, and the further sum of twelve hundred and thirty-four dollars, interest up to the 7th day of March 1877, and also the further sum of nine dollars and fifty cents for cost, with interest on the principal sum from the 7th day of March, 1877,
which B. J. Wilson lately in our superior court for said county
69 recovered against James M. Minor for principal, interest, and cost, and that you have the said several sums of money before the judge of said court on the 1st Monday in September next, to render to the said B. J. Wilson for principal, interest, and costs aforesaid; and have you then and there this writ.

Witness the Honorable Herschel V. Johnson, judge of said court, this 7th day of May, 1877.

S. M. NORTHINGTON, *Clerk.*

No property to be found to levy the within *fi fa.* upon.
August 1st, 1879.

REUBEN MAYO,
Dep. Sheriff, W. Co.

Endorsement: September term, 1877. Superior court of Washington county. B. J. Wilson *vs.* James M. Minor. Judgment. Entered March 7th, 1877. Principal, $2,900.00; int. to judg't, 123.00.

Award	1 00
Clerk	6 50
Sheriff	2 00
Costs	9 50

R. S. WORTHEN, *Att'y.*

70 The defendant John L. Hardee is required to answer the interrogatories in the foregoing bill of complaint numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, & 16, the complainant especially waiving all discovery of the other defendants.

JAMES K. HINES,
Sol. for Complainant.

GEORGIA,
Washington County.

In the Superior Court of said County, September Term, 1879.

B. J. WILSON, Complainant,
vs.
JAMES M. and ANNIE E. MINOR, JOHN L. HARDEE, Respondents.
} Bill for Relief, Discovery, &c.

To the defendants in the above case:

For certain causes, made known to us by the bill of complaint of B. J. Wilson for discovery and relief, filed in the clerk's office of the superior court of said county, on the chancery side of said court, in which said B. J. Wilson is complainant and you are the defendants, we command you that, laying all other barriers aside, *that*
71 you be and appear before us at our superior court to be held in and for said county on the first Monday in September next, to answer all such matters and things as then and there may be charged against you and to stand to and abide such further order and decree as may be had in the premises.

Witness the Honorable H. V. Johnson, judge of said court, this the 1st day of August, 1879.

S. M. NORTHINGTON, *Clerk.*

Personally served Mrs. Annie E. Minor with a copy of within bill in equity.
Aug. 5, 1879.

A. M. MAYO,
Sheriff, W. C.

Served J. M. Minor with a copy of within bill in equity August 5th, 1879, by leaving at his home.

A. M. MAYO,
Sheriff, W C.

72 GEORGIA, }
Washington County. }

CLERK'S OFFICE OF THE SUPERIOR COURT OF SAID COUNTY.

I, S. M. Northington, clerk of the superior court aforesaid, do hereby certify that the foregoing eighty-four pages (including this page) is a complete and true and correct copy of the record in the case of B. J. Wilson *vs.* J. M. Minor, John L. Hardee, *et al.*, brought to the Sep--ember term, 1879, of said superior court, and removed to the United States circuit court for the southern district of Georgia, by complainant, at the May term, 1880, of said superior court, in accordance with the act of Congress.

Witness my hand and official signature this Oct. 16th, 1880.

[Seal of Clerk Superior Court, Washington County, Georgia.]

S. M. NORTHINGTON, *Clerk.*

Endorsement: In Washington superior court, Sept. term, 1879. B. J. Wilson *vs.* James M. Minor, John L. Hardee, *et al.* Bill for relief, &c. Original filed in office this Aug. 1st, 1879. S. M. Northington, clerk. Filed Nov. 13, 1880. W. P. Ward, clerk. James K. Hines, sol. for complainant.

73 The foregoing transcript from the superior court of Washington county endorsed as follows, to wit:

No. 184. In U. S. circuit court for southern district of Georgia. In equity. B. J. Wilson, compl't, and James M. Minor and John L. Hardee, def'ts. Bill, &c. Removed case. Filed this 13th day of Nov'r, 1880. W. P. Ward, clerk. J. K. Hines, for compl't.

74 *Order to Take Testimony.*

B. J. WILSON, Complainant, and JAMES M. MINOR and JOHN L. HARDEE, Defendants.	Equity. Removed from the Superior Court of Washington County, Georgia.

It is ordered that Alfred B. Smith, Esq., be, and he is, appointed to take the testimony, orally, of such witnesses as either party may choose to bring before him, and he shall have the power, at the instance of either party, to compel the production of such books and papers as may be called for, and to preserve them for the court. Either party shall have at least one day's notice of the time and place of the examination of witnesses, and nothing in this order shall be construed to deprive either party of the right to take testimony by commission if he may so desire.

For the purposes of this order the said Alfred B. Smith is hereby appointed master in chancery of this court, and with power to compel the attendance of witnesses.

In open court, Dec. 29th, 1880.

JOHN ERSKINE, *Judge.*

75 We consent.

GEO. A. MERCER,
Sol. for Def'ts.
LESTER & RAVENEL,
For Compl't.

The foregoing order endorsed as follows, to wit: #184. U. S. circuit court, sou. dist. of Ga. B. J. Wilson, compl't, and James M. Minor *et al.*, def'ts. Equity. Order for testimony. Filed Dec. 29th, 1880. W. P. Ward, clerk.

Answer of James M. Minor and Wife.

In the Circuit Court of the United States for the Southern District of Georgia.

B. J. WILSON, Complainant,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*, Def'ts. } In Equity.

The joint and several answer of James M. Minor and Annie E. Minor, his wife, to the said bill of complaint.

These defendants, making the usual reservations, for answer to the said bill say that the firm of N. A. Hardee's Son & Company and the said defendant, John L. Hardee, as a member and
76 the representative of said firm, for several years prior to 1876 had been in the habit of making advances of money and supplies to the said James M. Minor to enable him to carry on his planting operations in the county of Washington, in said State; that the said James M. Minor was justly indebted to said John L. Hardee for said advances prior and up to the year 1876, and that on the 5th day of January, A. D. 1876, the said James M. Minor, in order to procure further advances for said year 1876, did enter into an agreement or contract with the said John L. Hardee to ship to said Hardee three hundred bales of cotton, said cotton to be sold by said Hardee on commission and the amount of said advances to be paid out of the proceeds thereof; and it was further agreed that in case the said James M. Minor should fail to control a sufficiency of cotton or money to pay said Hardee out of the crop of 1876 in full for all advances so made, that then the said Minor should sell and convey to said Hardee his plantation in Washington county, at number 12½ Central Railroad, containing four
77 hundred acres, or a sufficiency of the same, at the rate of ten dollars per acre, to pay up in full said advances, and would, on or before March first, 1877, execute a proper deed and

conveyance of the same; all of which will more fully appear, reference being had to said contract or agreement, a copy of which is hereto annexed, marked "Exhibit A."

And the said defendants say that in pursuance of said agreement the said John L. Hardee did in good faith make additional advances to said James M. Minor for the year 1876 to a large amount, to wit, to the amount of six thousand dollars ($6,000.00) and upwards.

And the said defendants, further answering, say that on the eighteenth day of March, 1876, the said James M. Minor did convey the said plantation mentioned in said agreement by a voluntary deed to himself, as trustee for his said wife, as set forth in said bill; but these defendants say that such conveyance was so made in the hope and belief that said James M. Minor would be able to pay off and discharge all of his indebtedness out of the crops for 1876; that said conveyance was voluntary and without pecuniary con-
78 sideration and was made without the knowledge and consent of said John L. Hardee; that the same was void against the said Hardee, to whom said James M. Minor was largely indebted, and was so made and intended to be made subject to said contract and agreement with said John L. Hardee, and that neither the said James M. Minor nor his said wife ever intended to claim or could claim any part of said land as against said Hardee until all of said indebtedness to said Hardee was first fully paid and satisfied.

And said defendants, further answering, say that the crops made upon said plantation during the year 1876 were wholly insufficient to pay the said advances, and that at the end of said year the said James M. Minor remained indebted to said John L. Hardee in a large sum of money, to wit, the sum of about fifty-nine hundred ($5,900.00) dollars, and that in accordance with the said contract and agreement the said James M. Minor, on the sixth day of February, 1877, did sell and convey his said plantation to said
79 John L. Hardee, the said Annie E. Minor joining in said conveyance in testimony of her consent thereto.

And these defendants, further answering, say that said conveyance was in good faith, with no intention of hindering or defrauding any one, but was made in pursuance of said contract and in settlement and satisfaction of the indebtedness of said James M. Minor to said John L. Hardee; that no bond to reconvey was taken from said Hardee, and that said conveyance was not intended as a mortgage or security for said debt, but that said sale was absolute—was made in payment of said indebtedness—the said Hardee surrendering the notes of said James M. Minor held by him; that the relationship of debtor and creditor then and there ceased, and that by said sale and conveyance the indebtedness of said James M. Minor to said John L. Hardee was wholly extinguished.

And defendants say that said John L. Hardee then became and now is the sole and absolute owner of said land, with the right to lease, sell, or otherwise dispose of the same at his own pleasure,
80 and that they have no legal title or claim thereto; that if the said James M. Minor could pay to the said John L. Hardee the full amount which said land cost the said Hardee, they hope

and do not doubt that he would give said Minor the refusal in the repurchase of said land, as the object of said Hardee was not to speculate in said land, but to have his debt paid.

But these defendants say that they have no right or claim to enforce any reconveyance of said land should the said Hardee refuse to sell the same.

December 28th, 1880.

JAMES M. MINOR. [L. S.]
ANNIE E. MINOR. "

GEO. A. MERCER,
Solic. for Defendants.

EXHIBIT "A."

GEORGIA, }
Washington County. }

These articles of agreement, made and entered into this 5th day of January, A. D. 1876, between James M. Minor, of the
81 county of Washington and State of Georgia, of the one part, and John L. Hardee, of the firm of N. A. Hardee, Son & Co., of the county of Chatham and said State, of second part, witnesseth:

That the subscriber hereto, James M. Minor, party of first part, for and in consideration of plantation supplies, monies, and guano advanced to him to enable him to carry on his farming business during the year of 1876 as well as to assist him in carrying on his mercantile business at No. 12½ C. R. R., and to be advanced during the year of 1876, the said J. M. Minor, the subscriber hereto, agrees to ship and consign to the said N. A. Hardee, Son & Co. or John L. Hardee three hundred (300 b. c.) bales of cotton to sell on commission and to pay for said advances; and should the said James M. Minor fail to ship the whole of said 300 bales of cotton to said firm, then he agrees to pay them commissions for selling the deficiency or the number not shipped, same as if they had been shipped, in consideration of the ($3,000.00) three thousand dollars to be advanced during the year of 1876.

82 And it is further agreed and covenanted that in case the said James M. Minor, party hereto subscribed, should fail to make or control a sufficiency of cotton or money to pay said N. A. Hardee, Son & Co. or John L. Hardee, of said firm, out of the crop of present year of 1876, in full for all advances made to him by the said N. A. Hardee, Son & Co. during the year of 1876, then and in that case the said James M. Minor, subscriber hereto, for himself, his heirs and assigns, agrees to sell to the said N. A. Hardee, Son & Co. or John L. Hardee his No. 12½ C. R. R. plantation, containing four hundred acres, being in Washington county, Georgia, and adjoining lands of W. V. Tanner, C. R. R., and others, or a sufficiency of said plantation to pay up in full for said advances made, at the price of ten dollars per acre, with all the appurtenances thereto, for the sum of ten dollars per acre, and will on or before the first day of *day of* March, A. D. *A. D.* eighteen hundred and seventy-seven (1877), on the receipt of the sum of ten dollars per acre, execute a

proper deed of conveyance thereof, with a covenant of general
83 warranty and against incumbrances, to the said J. M. Minor, his heirs and assigns.

It is also agreed that said J. M. Minor shall pay all taxes and outgoings in respect of the premises for the year- A. D. 1876 and 1877, and shall work the place and receive the rents or profits on same in the years 1876 & 1877, and shall surrender the same to said John L. Hardee, his heirs or assigns, on or before the first day of January, 1878, in good repair.

In witness whereof the subscriber, James M. Minor, hereto has set his hand and seal the day and year above written.

J. M. MINOR.

Signed in presence of—
A. H. TRAWICK, *J. P.*
D. M. SALTER.

The foregoing answer and exhibit endorsed as follows, to wit:
In the circuit c't of the U. S. for the so. dist. of Ga. Transferred from Washington superior court. B. J. Wilson, compl't, and James M. Minor *et al.*, defendants. In equity. Answer of James M. Minor & wife. Filed Jan. 3, 1881. W. P. Ward, clerk. G. A. Mercer, sol. for def't.

84 *Replication to Answer.*

In the United States Circuit Court for the Southern District of Georgia and Eastern Division Thereof.

B. J. WILSON, Complainant, and JAMES M. MINOR, JOHN L. HARDEE, *et al.*, Defendants.	In Equity. Removed from Washington Superior Court.

The replication of B. J. Wilson, complainant, to the answer of James M. Minor and Annie E. Minor, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says that he will ever maintain and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing what-
85 ever in said answer contained material or effective in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall

direct, and humbly prays as in and by his said bill he has already prayed.

J. K. HINES AND
LESTER & RAVENEL,
Sol's for Compl't.

The foregoing replication endorsed as follows, to wit:
In the 5th circuit court U. S. for southern district of Georgia, east. division thereof. B. J. Wilson, compl't, and J. M. Minor, John L. Hardee, *et al.*, defendants. Replication to answer of J. M. Minor and Annie E. Minor. Filed M'ch 16, 1881. W. M. Heyward, dep. cl'k. J. K. Hines & Lester & Ravenel, compl't's solicitors.

I consent to this replication being filed *nunc pro tunc.*
GEO. A. MERCER,
Defendants' Solic.

March 16th, 1881.

86 *Order Enlarging Time to Take Testimony.*

B. J. WILSON, Compl't,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*
} In Equity. Removed from the Superior Court of Washington Co.

Ordered that the time for taking the testimony in the above case be extended until the next term of this court, special cause having been shown to the court why the time should be extended.
In open court, May 16, 1881.

J. ERSKINE, *Judge.*

We consent.

GEO. A. MERCER,
Of Counsel for Def'ts.
LESTER & RAVENEL,
Compl't's Sol's.

Endorsed as follows, to wit:
184. Circuit court U. S., so. dist. Georgia. B. J. Wilson, compl't, and James M. Minor, John L. Hardee, *et al.* Order enlarging time for taking testimony. Filed May 16th, 1881. W. P. Ward, clerk. J. K. Hines & Lester & Ravenel, compl't's sol's.

87 *Order Extending Time for Taking Testimony.*

In the Circuit Court of the United States for the Southern District of Georgia.

B. J. WILSON
vs.
JAS. M. MINOR *et al.*
} In Equity.

Upon motion of George A. Mercer, solicitor for defendants, it is ordered that the time for taking testimony in the above cause, be-

fore A. B. Smith, by special master or by commission, be, and the same is hereby, extended in favor of complainant and defendants until the first day of the next, the November, term, 1883, of said circuit court.

June 11th, 1883.

W. B. WOODS,
Circuit Justice.

Endorsed as follows, to wit:

In the circuit court of the United States for the southern district of Georgia. B. J. Wilson *vs.* Jas. M. Minor *et al.* In equity. Order extending time for taking testimony. Filed June 11th, 1883. M. Erwin, deputy clerk. Geo. A. Mercer, solicitor for defendant-.

88 *Order as to Withdrawal of Original Deed.*

In the Circuit Court of the United States for the Eastern Division, Southern Dist. of Ga., November Term, 1883.

B. J. WILSON
vs.
J. M. MINOR *et al.* } In Equity.

Upon the application of solicitor for defendants it is ordered that a certain contract, dated January 5th, 1876, purporting to be signed by J. M. Minor and to be witnessed by A. H. Trawick, J. P., and D. M. Salter, attached to the testimony in said case, taken before C. C. Brown, commissioner, and the papers thereto attached, be temporarily withdrawn and sent by Geo. A. Mercer, defendants' solicitor, to W. G. Roberson and A. M. Mayo, special examiners appointed by order of the court December 7th, 1883, to take further testimony in said cause in Washington county, Georgia.

December 10th, 1883.

JAS. W. LOCKE, *Judge.*

Endorsed as follows, to wit:

In U. S. circuit court, E. D., so. dist. Ga. B. J. Wilson and J. M. Minor *et al.* Order to withdraw papers from file, &c. Filed Dec. 10, '83. M. Erwin, dep. cl'k.

89 *Interlocutory Decree.*

Circuit Court of the United States, Southern District of Georgia, Eastern Division.

B. J. WILSON
vs.
JAMES M. MINOR *et al.* } In Equity.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered adjudged, and decreed as follows, viz:

That the trust deed from James M. Minor to Annie E. Minor, his

wife, made and executed the 18th day of March, 1876, be hereby declared void and of no effect.

That the indenture and conveyance of James M. Minor and Annie E. Minor, purporting to convey to John L. Hardee a certain tract of land lying and being in the county of Washington, said State, and bearing date the sixth day of February, A. D. 1877, be held and construed to be not a conveyance of said land, but a security for the payment of the debt due and owing to said Hardee from said
90 James M. Minor at that time to be determined by reference to a master.

That the judgment of B. J. Wilson, the complainant herein, from Washington Co. superior court for twenty-nine hundred dollars, principal, and twelve hundred and thirty-four dollars, interest, bearing date the seventh day of May, A. D. 1877, be held and determined to be a lien upon said lot and parcel of land lying and being in the county of Washington, in said State, on the C. R. road, adjoining lands of the estate of R. Maxwell, W. J. Tanner, B. J. Wilson, and others, containing four hundred acres of land, upon the satisfaction and payment of said amount due said John L. Hardee.

That the question of amount due from said James M. Minor to John L. Hardee be referred to Alfred B. Smith as master in chancery to examine and state the amount so due, computing from amount due at date of said deed from said James M. Minor and Annie E., his wife, to said John L. Hardee, allowing interest on said amount and charging rents actually received; that upon a final determination of said amount due the property be sold by the marshal
91 to satisfy said amount in Hardee's farm, and any balance arising from said sale after payment of said amount due said Hardee, together with the costs herein incurred, be paid said B. J. Wilson, complainant herein, on account of said judgment.

May 3d, 1884.

JAS. W. LOCKE, *Judge.*

The foregoing decree endorsed as follows:

In U. S. circuit —, east. div., so. dist. Ga. B. J. Wilson *vs.* Jas. M. Minor. Final decree. Filed May 3d, 1884. Marion Erwin, deputy clerk.

Master's Report.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

BENJ. J. WILSON, Complainant,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*, Def'ts. } In Equity.

To the honorable the judge of the 5th circuit court of the United States for the southern district of Georgia, eastern division:

92 The above case having been referred to me as master in chancery for the purpose of ascertaining the amount of

money due by James M. Minor to John L. Hardee on the 6th day of February, 1877, and to remain (examine) and state the amount now due by said Minor to said Hardee, allowing interest on said amount and charging rents actually received, I submit to your honor as my report that I have made a very thorough and careful examination of the testimony heretofore taken by me and of the testimony taken — interrogatories, and I have examined the books and accounts of the said John L. Hardee, and have examined the answer of the said James M. Minor and John L. Hardee filed in the case, and find that on the 6th day of February, 1877, the said James M. Minor owed the said John L. Hardee the sum of five thousand eight hundred and thirty-six dollars and thirteen cents ($5,836.13), and that the sum of three thousand eight hundred and ninety-three dollars and thirty cents ($3,893.30) has been paid as rents; that the rents *was* fixed at $500.00 per annum and rents paid as fol-

93 lows: Up to the first day of November, 1878, there has been paid on account of rents $1,000 00

On November 1, 1879	.....	500 00
" " 1, 1880	.....	493 30
" " 1, 1881	.....	400 00
" " 1, 1882	.....	500 00
" " 1, 1883	.....	500 00
" October 10th, 1884	.....	500 00
Making in all	.....	$3,893 30

received for rents of said place since the 6th day of February, 1877. I find that there was no contract in writing between John L. Hardee and James M. Minor in regard to the rate of interest to be charged, and I have calculated the interest at the legal rate and have allowed the said James M. Minor all his credits for rents and interest, and as the result of my investigation I find that the said James M. Minor, on the first day of November, 1884, owed and is now indebted to the said John L. Hardee the sum of four thousand five hundred and seventy-four dollars and fifty-five cents ($4,574.55); all of which is respectfully submitted by—

ALFRED B. SMITH,
Master in Chancery.

Nov. 1st, 1884.

94 The foregoing report of master in chancery is endorsed as follows, to wit:

#184. In the fifth circuit court of the United States, southern district of Georgia. Benj. J. Wilson, compl't, and James M. Minor *et al.*, def'ts. Report of the master in chancery. Filed in office Nov. 1st, 1884. H. J. Herb, deputy clerk.

Exceptions to Master's Report.

In the Circuit Court of the United States for the Southern District of Georgia, Eastern Division.

BENJAMIN J. WILSON, Complainant,
and
JAMES M. MINOR *et als.*, Defendants. } In Equity.

Master's report by A. B. Smith, master in chancery. Filed Nov. 1st, 1884.

And now comes the complainant, by his solicitors, Lester & Ravenel, and excepts to the report of the master filed in said cause on the first day of November, 1884, and for ground of exception says:

First. That no notice of the time and place of proceeding
95 in the case before said master was given to complainant or his solicitors, nor was any time or place of hearing assigned by said master before proceeding to investigate the matters referred to him for investigation, nor did complainants waive notice of said time and place of hearing by appearing or in any other manner.

Second. That neither complainants nor his solicitors appeared before said master at the hearing of said cause, nor did he or them have an opportunity of appearing at said hearing, nor was he or them informed of the time and place of hearing.

Third. That at the hearing before said master, as appears by his report, the books and accounts of the defendant John L. Hardee were examined by said master and made the basis of his report, and complainants — claim- the right to examine said books and accounts and to examine the defendant J. L. Hardee relative to the same, which right was denied to him and them by the master's failure to so notify him or them.

96 Fourth. That at the hearing before said master the defendant John L. Hardee appeared in person, with his books and accounts, and testified before said master, and complainants claim- the right to examine said Hardee, which right was denied *them* and his solicitors by reason of the failure of the said master to notify complainant or his solicitors of the time and place of said hearing.

Wherefore complainant excepts to said report and prays that the cause be referred back to said master to be heard, as required by the rules governing reports to be made by masters and hearings thereon.

LESTER & RAVENEL,
Complainant's Solicitors.

The foregoing exceptions to master's report endorsed as follows, to wit:

Endorsement: In the circuit court of the United States for the eastern division, southern district of Georgia, November Term, 1884. Benj. J. Wilson, compl't, and James M. Minor *et al.*, def'ts. In

equity. Exceptions to master's report. Filed in office this Nov. 24, 1884. H. H. King, clerk. Lester & Ravenel, compl't's solicitors.

97 *Appearance of C. N. West.*

In the Circuit Court of the United States, Eastern Division of the Southern District of Georgia.

B. J. WILSON, Compl't,
and
J. M. MINOR *et al.*, Defendants. } In Equity. At Rules, December, 1884.

Ordered *the* Charles N. West be entered of record as solicitor for John L. Hardee, one of the defendants in this cause.

Witness the Honorable M. R. Waite, Chief Justice of the Supreme Court of the United States, at Savannah.

Dec. 1st, 1884.

M. ERWIN, *Dep. Clerk.*

Endorsement: In U. S. cir. court, E. D., so. dist. of Ga. B. J. Wilson *vs.* Jas. M. Minor *et al.* Appearance of C. N. West, sol'r for John L. Hardee. Filed Dec. 1, 1884. M. Erwin, dep. clerk.

98 *Order Setting Aside Master's Report.*

In Circuit Court of the United States.

B. J. WILSON, Compl't,
and
JAS. M. MINOR *et al.*, Def'ts. } In Equity.

This cause coming on to be heard on exceptions of the complainant to the report of the master, and it appearing that the facts stated in said exception as grounds thereof are true, and the same being good cause for exception to the said report—

It is ordered that the said master's report be set aside, and the said cause is referred anew to the said master, Alfred B. Smith, in the same manner and for the same purposes and with the same powers as under the original reference to him.

In open court, Dec. 22d, 1884.

ALECK BOARMAN,
U. S. Judge.

Endorsement: No. 184. In U. S. circuit court, E. D., southern dist. of Georgia. Wilson *vs.* Minor *et al.* Order setting report aside and referring cause to master. Filed Dec. 2d, 1884. M. Erwin, dep. clerk.

99 *Report of Master in Chancery.*

In the 5th Circuit Court of the United States for the Southern District of Georgia.

BENJ. J. WILSON, Compl't,
and
JAMES M. MINOR & JOHN L. HARDEE, Def'ts. } In Equity.

To the honorable the judge of the 5th circuit court of the United States for the southern district of Georgia, eastern division:

The above case having been referred to me as master in chancery for the purpose of ascertaining the amount of money due by James M. Minor to John L. Hardee on the 6th day of February, 1877, and to examine and state the amount now due by said James M. Minor to the said John L. Hardee, allowing interest on said amount and charging rents actually received—

I submit to your honor this my report (and for myself I desire to state that the testimony which was last taken and which is
100 filed with the report and on which my conclusions are founded is very different from the testimony filed on the 1st November, 1884) and my finding now is based entirely on the testimony taken on the 20th December, 1884, and from the testimony filed 19 November, 1881. I find from the testimony last taken—that on the 6th day of February, 1877—that J. M. Minor was actually indebted to the said John L. Hardee the sum of four thousand dollars and sixty-two cents ($4,000.62). I also find that there was a contract between Minor and Hardee as to the rent to be paid for the property, and the contract was that Minor was to pay five hundred dollars per annum as rent, and I find that he, Minor, paid the rent as follows:

For the years 1877 & '78, paid	March	28,	1878		$1,000 00
1879, "	October	31,	'79		500 00
1880, "	"	"	'80		493 30
1881, "	"	"	'81		400 00
1882, "	"	"	'82		500 00
1883, "	"	"	'83		500 00
1884, "	"	10,	'84		500 00
Making a total of					$3,893 30

which Mr. Hardee has received for rent since the 6th day of February, 1877.

101 I find that there was no written agreement between Minor and Hardee as to the rate of interest to be charged on the indebtedness of the said J. M. Minor and have charged him with the legal rate per cent.

There has been a very considerable amount of testimony taken in the case, and before coming to a conclusion in the matter I have

carefully examined it, and especially with a view to ascertain the exact balance due on the 6th of Feb'y, 1877, by J. M. Minor, and the testimony of Mr. Hardee taken on December 20th, 1884, is sustained by the testimony taken by me and filed on November 19th, 1881 (see statement marked No. 1 & No. 2, the same being an extract from the books of N. A. Hardee, Son & Co.—*i. e.*, John L. Hardee), from which it appears that on Feb'y 6th, 1877, the books — Minor's indebtedness to be $3,882.30, and by adding to this the $118.50 (which Mr. Hardee swears was due, but not on the books) we have $4,000.62 as the amount due on the 6th February, 1877, on which amount I have charged J. M. Minor with the legal
102 rate of interest up to the time of the first payment of rent, which was $1,000.00, paid by J. R. Thigpen on March 28, 1878, which amount I deducted from the principal and interest added and then calculated the interest up to the new payment and continued so to do for each year, the payments having been made as herein already stated, and after a careful calculation of the interest and a deduction of several payments I find that there is now due to the said John L. Hardee the sum of $1,784.76 (one thousand seven hundred and eighty-four $\frac{76}{100}$ dollars) by the said James M. Minor for and concerning the matters referred to me.

April 13th, 1885.

ALFRED B. SMITH,
Master in Chancery.

Endorsement: No. 184, box 46. In 5th circuit court of the United States, southern district of Georgia. B. J. Wilson, complainant, and James M. Minor and John L. Hardee, defendants. Report of the master in chancery. Filed in office April 14th, 1885. H. H. King, clerk.

103 *Bill of Exceptions.*

In the Circuit Court of the United States for the Southern District of Georgia.

BENJAMIN J. WILSON, Complainant,
and
JAMES M. MINOR *et al.*, Defendants.

The defendant John L. Hardee excepts to the report of the master filed in this cause, and for ground of exception says:

1. That the said master erred in his said report in charging this exceptant with one thousand dollars on the 28th day of March, 1878, the testimony before said master showing that the said sum of one thousand dollars paid to this exceptant at said date was not paid as a credit upon the principal sum found to be due on February 6th, 1879, nor as rent, but was paid to and appropriated as a credit by this exceptant upon the debt then existing to him from James M. Minor, exclusive of said principal sum.

2. That the said master erred in his said report in charg-
104 ing the excess of each payment over the interest then due on said principal sum as a credit upon the said principal, the testimony before the said master showing that all such excess was paid to and received by this exceptant as a credit upon the general unsecured debt of the said James M. Minor to this exceptant.

3. That the said master has erred in stating the debt of the said James M. Minor to this exceptant at $1,785.76 instead of the sum of four thousand dollars, the true amount of the said indebtedness under the decree formerly made in this cause.

C. N. WEST,
Att'y for Hardee.

Endorsement: In the circuit court of the United States for the southern district of Ga. Benjamin J. Wilson, complainant, and James M. Minor *et al.*, defendants. Bill of exceptions. Filed May 6th, 1885. H. H. King, cl'k. Chas. N. West, att'y.

105 *Final Decree.*

In the Circuit Court of the United States, Southern District of Georgia.

BENJAMIN J. WILSON, Complainant,
and
JAMES M. MINOR and JOHN L. HARDEE, Defendants.

This cause came on to be heard on the report of the master and the exceptions thereto and was argued by counsel; whereupon it was considered, ordered, adjudged, and decreed that the said exceptions be, and the same are, overruled and the said report be confirmed, and that the decree heretofore made in this cause be, and the same is hereby, closed and confirmed; and it is decreed that the United States marshal for the said southern district of Georgia do proceed to advertise and sell, in accordance with the law regulating judicial sales out of this court, all that tract of land lying and being in the county of Washington, in said State of Georgia, known as the station number twelve
106 and a half, place of the said James M. Minor, adjoining lands of the estate of R. Maxwell, W. J. Tanner, B. J. Wilson, and others, containing four hundred acres of land, more or less, and all improvements thereon, and out of the proceeds thereof, first, to pay the costs of sale and of this cause, to be taxed, and then unto John L. Hardee the sum of seventeen hundred and eighty-five and $\frac{76}{100}$ dollars, with legal interest from April 13th, 1885, and after the satisfaction of the said debt, should there be a balance in his hands, to pay unto Benjamin J. Wilson the sum of twenty-nine hundred dollars, principal, twelve hundred and thirty-four dollars, interest, and interest upon the said principal since the 7th day of May, 1877, and the balance of said proceeds, if any, unto the said John L. Hardee for account of said James M. Minor; and it is further ordered that a fee of one hundred and fifty dollars be allowed as

compensation to Alfred B. Smith or his legal representatives for services as master in this cause, the same to be taxed as costs.

DON A. PARDEE,
Circuit Judge.

December 12th, 1887.

107 Endorsement: Circuit court of the United States, eastern division, southern district of Georgia, November term, 1887. Benjamin J. Wilson, complainant, and James M. Minor & John L. Hardee, defendants. Final decree. Filed Dec. 12th, 1887. H. H. King, clerk.

Appeal of John L. Hardee.

Extract from United States circuit court, eastern division, southern district of Georgia, Minutes 1, folio 206, Nov. term, 1887.

MONDAY, *December 12th*, 1887.

* * * * * * *

BENJAMIN J. WILSON, Complainant,
vs.
JAMES M. MINOR and JOHN L. HARDEE, Def'ts. } In Equity.

And now comes the defendant John L. Hardee, by his attorney, Charles N. West, and enters of record his appeal to the above decree, which is hereby granted.

In open court, December 12th, 1887.

DON A. PARDEE,
Circuit Judge.

108 *Bond on Appeal.*

Supreme Court of the United States.

BENJAMIN J. WILSON, Complainant,
vs.
JAMES M. MINOR, JOHN L. HARDEE, Defendants.

Know all men by these presents that we, John L. Hardee and Joseph D. Weed, of the city of Savannah, in the southern district of Georgia, are held and firmly bound unto Benjamin J. Wilson in the sum of five hundred dollars ($500), to be paid to the said Benj. J. Wilson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 17th day of January, 1888.

Whereas the above-named John L. Hardee hath taken an appeal to the *the* Supreme Court of the United States to reverse the
109 decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Georgia, eastern division:

Now, therefore, the condition of this obligation is such that if the above-named John L. Hardee shall prosecute his appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN L. HARDEE. [L. S.]
JOSEPH D. WEEP. [L. S.]

Executed and acknowledged before me this Jan'y 17th, 1888.
MARION ERWIN,
Deputy Clerk U. S. C. C.

Approved.
EMORY SPEER,
U. S. Judge.

Endorsement: Circuit court of the United States, eastern division, southern district of Georgia. B. J. Wilson *vs.* James M. Minor & John L. Hardee. Bond on appeal. Filed Jan'y 17th, 1888. M. Erwin, dep. clerk.

110 *Testimony for Complainant.*

UNITED STATES OF AMERICA, }
Southern District of Georgia. }

In the Circuit Court of the United States for the Southern District of Georgia.

To E. A. Sullivan and B. T. Rawlings, John Walter Robison & O. H. Rogers:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed, and by these presents are vested (any two or more of you) with full power and authority, diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein B. J. Wilson is complainant and James M. Minor *et al.* are defendants, as well on the part of the said defendant as on the part of the said complainant or either of them.

111 And it is required of you (or any two or more of you) that on certain days and at certain places by you to be appointed for that purpose you do cause the said Jasper W. Henderson, J. Ben. Wilson, Wm. V. Tanner, H. K. Newsome, Irwin L. Adams, and Ira Walden, witnesses on the part of the complainant, to come before you, and then and there examine them upon the said interrogatories on their corporal oaths first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such their examinations and reduce them into writing, and when you shall have so taken them you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seal of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you

and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereto annexed, and full power is
112 given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerk's upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this 15th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and the one hundred and sixth year of American Independence.

[Seal of United States Circuit Court, So. Dist. of Ga.]

WM. M. HEYWARD,
Deputy Clerk.

113 *Schedule. The Commissioners' Oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause take the examination and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you, and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks employed by you and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

O. H. ROGERS.
B. T. RAWLINGS.

Subscribed and sworn to before each other 11th day of October, A. D. 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

114 Circuit Court U. S., Southern District of Ga. In Equity.

B. J. WILSON, Complainant,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*,
Respondents.
} Removed from Superior Court of Washington County.

Interrogatories to be propounded to Jasper W. Henderson, J. Ben. Wilson, Wm. V. Tanner, H. K. Newsome, Irwin L. Adams, and Ira Walden, material witnesses for the complainant and who reside in the county of Washington, in said State.

Interrogatories to be propounded to Jasper W. Henderson, J. Ben. Wilson, Wm. V. Tanner, H. K. Newson, & Irwin L. Adams.

I.

Do you know the parties, complainant and defendants, in this suit?

II.

Do you know the tract of land, the subject of this suit, lying in Washington county, on Sun Hill, containing four hundred acres, more or less, adjoining lands of the estate of R. Maxwell, W. V. Tanner on the west, lands of *lands of* W. V. Tanner on the
115 north, and lands of A. T. Cheatham and W. C. Riddle on the east? If yea, state what the value of that land was on the 6th day of February, A. D. 1877, and about that time. Please state your means of knowledge.

III.

How far does said land lie from Central railroad, and does it or not embrace any part of the village of Sun Hill? If you say it lies on the Central railroad and embraces part of said village, state on which side of the railroad it lies. Is or is not the side of said town embraced by the land in dispute the most eligible part of said station for a town or village? How is the other side of the railroad? Is it or is it not low, flat, and swampy, or how? What is the character of the side embraced in this land? Is it high and dry or low and flat? Does or does not the part of this land in and around Sun Hill contain good and valuable building lots? What is it worth per acre for this purpose, and how — building lots of an acre
116 each or about how many are there in this land in and near Sun Hill fit and suitable for store buildings and residences?

IV.

What improvements were upon this land on 6th February, 1877, at the time when James M. Minor pretends to have sold this land to Hardee?

What improvements have been placed there since, and what is the value of them?

Who occupies and uses them, and who has and has had the general possession and control of said land and improvements?

V.

Who was in possession and control of this land on the 6th of February, 1877, and who has — the possession since that time?

Was there or not any change in the possession of this land on and after the 6th day of February, 1877?

Has John L. Hardee or has he not assumed possession of said land since 6th Feb'y, 1877, as against James M. Minor or any one else?

117 Have you or have you not observed any change in the possession, control, and management of this property since the 6th day of February, 1877?

VI.

When Minor made this pretended conveyance to Hardee, in Feb'y, 1877, and in March, 1876, when he declared a trust for his wife, did he or did he not have any other property incurred out of which other creditors could make their claims? If so, what was it and where *it is?*

VII.

Interrogatories for Jasper W. Henderson.

Did you or not have a conversation with the defendant James M. Minor about or not long after the time of the pretended sale to Hardee upon the subject of this transfer to Hardee? If so, what did he say was the purpose and object of the deed to Hardee, and what was the understanding about it?

Did Minor or did he not tell you that said deed was made to Hardee to secure Minor's indebtedness to Hardee, and that he, Minor, had the right to redeem said land?

Who are W. L. & J. R. Thigpen?

118 What is the age of J. R. Thigpen?

The age of James M. Minor?

What is J. R. Thigpen's business, and what business has he been following since Feb'y, 1877, and what business did he follow prior to that time?

What business has James M. Minor carried on at Sun Hill on this land since Feb'y, 1877, and which one of the stores has he occupied since that time?

VIII.

Who has had the possession, control, and management of this land since Feb'y, 1877?

IX.

Does or does not the land referred to — the annexed affidavit constitute the land in dispute?

On what lands was Minor living & farming at the date of said affidavit?

Has it or has it not depreciated since the date of said affidavit?

Was it or was it not at the time of the pretended sale to Hardee as valuable or more so than at any time since?

Have you or have you not bought similar lands further
119 from the railroad than this land? If so, what did you pay for it?

Which is more valuable—this land or the land you bought?

X.

Please state all facts within your knowledge going to show that the deed from Minor to Hardee was only intended as security for Minor's indebtedness to him.

XI.

To Ira Walden, J. P.:

Look at the annexed affidavit and state whether or not the James M. Minor who purports to be the affiant is the same person as the defendant in this suit.

For what purpose and in what proceeding was the affidavit made?

XII.

To all the witnesses:

State all you know that will benefit the complainant.

JAMES K. HINES,
LESTER & RAVENEL,
Complainant's Solicitors.

120 STATE OF GEORGIA, }
Washington County. }

Personally appeared before undersigned James M. Minor, in and for said county and State, who, being duly sworn, says he is a tenant of William C. Riddle, of said county, and that from his knowledge of the plantation whereon he resides the condition of said farm has been very much improved for agricultural purposes; besides, the value of the lands has been increased in erecting permanent fixtures upon it. From my personal acquaintance with Mr. Riddle's management of his property he has been watchful and labored to preserve and protect its best interest by acting himself and advising his tenants to use the utmost economy.

As a landlord Mr. Riddle has required his tenants to keep up the fencing, which will compare favorably with *with* any plantation of like size in Middle Georgia. The mules worked by the tenants *has* been well cared for, with exception of the twenty head worked upon that portion of plantation cultivated by T. J. Smith. As for
121 the value of the lands, they have not decreased, and their location will always command fair prices.

JAMES M. MINOR.

Sworn to & subscribed before me Nov. 5th, 1875.

IRA WALDEN, *J. P.*

The foregoing interrogatories endorsed as follows:
Circuit court of the United States, southern district of Georgia. B. J. Wilson, complainant, and James M. Minor, John L. Hardee, *et al.*, defendants. Interrogatories for Jasper W. Henderson, J. Ben. Wilson, William V. Tanner, H. K. Newsome, Irwin L. Adams, & Ira Walden, witnesses for complainant. Filed August 24th, 1881. W. M. Heyward, deputy clerk. James K. Hines & Lester & Ravenel, attorneys for complainant.

Service acknowledged and copy received this Aug. 26th, 1881.
GEO. A. MERCER,
Sol'r for Minor & Wife.

Service acknowledged, copy received, & time and further service also waived.
August 25th, 1881.
B. D. EVANS,
Att'y of Record for John L. Hardee.

Complainant nominates E. A. Sullivan and B. T. Rawlings as commissioners on his part.
Sept. 14th, 1881.
LESTER & RAVENEL,
Compl't's Sol's.

122 *Cross-Interrogatories.*

The defendants James M. Minor and his wife object to so much of the foregoing interrogatories as seek to prove the value of the lands referred to therein, its location, peculiar advantages, if any, &c., and more particularly to the second, third, fourth, sixth, seventh, ninth, and eleventh direct interrogatories as tending to elicit matters that are irrelevent and immaterial to the issues involved, and subject to these objections these defendants propound the following cross-interrogatories to the first five witnesses:

1st X. State your occupation and your opportunities for ascertaining the value of the land enquired about in Feb'y, '77. Did you buy it or have you ever bought it or any similar tract? If so, state when and where. By what rule have you been able to ascertain its value at that date? Are you a dealer in real estate or an expert in values of land? How much land did you buy or sell in that locality in
123 1877 and how much since?
2nd X. What is the population of Sun Hill village, and — the people living there without homes or places of business; and, if not, what makes you think they would leave their present locations for the privileges of buying lots on this tract of land to build stores or houses? Name the people so included, with the prices they would give for lots and your means for knowing these facts. How many new buildings lots are needed at Sun Hill to supply the annual demand, and how many vacant lots are there to be had outside of this tract of land?

3rd X. How do you know about the improvements — were on this tract in 1877 and what has been put up since? Can you or do you look over this tract of land every day? If not, how often? How much of it is cleared and how much woods? In looking for new structures do you use the naked eye, spectacles, or a spy-glass? If you state who occupies the buildings on said land, then give a list of the buildings, with the names of all parties living in each
124 or occupying the same, stating when they started to live in or occupy the same and whether you entered the dates in your diary or rely upon your memory.

4th X. State fully how you have kept informed as to Mr. Hardee's action with reference to said land, how you became aware from time to time of the contents of his letters about this place, and such orders and instructions as he issued in writing or otherwise relative thereto. State particularly what rent he received, when he received it, who paid it, who collected it, whether it was paid on the premises or elsewhere, and how much time you devoted to this business.

5th X. In answer to the sixth interrogatory have you stated what Mr. Minor had or have you stated what you supposed he had? Are you relying on your own knowledge? If so, state the sources of your information. Was Minor in the habit of consulting you about his affairs? If so, state the years in which he so consulted you. Were you alone present or were others there? If so, give their names and state exactly what Minor said.

125 For Jasper W. Henderson:

6th X. State the date of the deed made by Minor to Hardee. Was there one or two deeds? How do you remember the day or date? Be explicit on this point. Was it before or after the making of the first or second deed; what was Minor's exact language; who else was present at the time; where was Hardee, and how often have you talked with Hardee about this matter? State fully the means of knowing the ages of James M. Minor and J. R. Thigpen. Where were they born, and in what year? Were you present? If not, how can you swear to their ages? Can you state of your own knowledge for whose account or benefit Thigpen or Minor have carried on business? If yea, state how you know this. Are you willing to swear that John L. Hardee does not now own this land and has not owned it since 1877? If so, state fully your reasons. Are you willing to swear that Minor could not live on Hardee's land? If so, state why. Be explicit. Have you never seen one man living on another's land?

126 7th. Were you present when said affidavit was signed or written out? Who prepared it? What connection did you have with the matters therein referred to and how — you know this to be the same land? Who told you Minor signed said affidavit? Did you want the land you bought and did you buy it for that reason; if not, for what reason? What makes this tract valuable—its fertility or proximity to the R. R.? Do you not know that Mr. Hardee has frequently tried to sell this place to numbers of people living in its

vicinity for what it cost him and that no one would buy it at that figure?

What do you return the place you bought at per acre for taxation now and what did you swear it was worth then? Did you pay cash, give notes, or exchange property for it?

8th. State how you know what transpired between Hardee & Minor when the deed was made. Were you in their confidence or did you overhear them accidentally? Was the entire arrangement made verbally or by letter; if the latter, where and when did you read the letters?

127 If it was verbal, state where it was made, in what county, and when.

9th X. How do you know what land was referred to in said affidavit and how do you know what land is referred to in these interrogatories? Who told you? Do you swear that Minor had no other land but this and that he could not have alluded to any other in said affidavit? If so, give your reasons fully.

To all witnesses:

10th X. State all you know going to show that your answers are based largely upon impressions, suppositions, hearsay, and a careless habit of coming hastily to conclusions without fully realizing the consequences, and more particularly that it is impossible that your answers could have been based upon a personal knowledge of the matters enquired about in the direct interrogatories.

GEO. A. MERCER,
Sol. for Minor & Wife.

Filed Sept. 14, 1881.

W. M. HEYWARD,
Dep. Clerk.

128 *Answers and Depositions of Irwin L. Adams and W. Jasper Henderson.*

In the Circuit Court of the United States for the Southern District of Georgia.

B. J. WILSON
vs.
JAMES M. MINOR, JOHN L. HARDEE, *et al.* } Case.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the 5th circuit court of the United States for the southern district of Georgia. Taken and reduced to writing, in city of Sandersville, on this the 14th day of October, 1881.

IRWIN L. ADAMS, aged 41 years, being duly sworn, answers and deposes as follows, to wit:

To 1st int'y he answers: I know the parties.

To 2nd int'y he answers: I know the tract of land the subject of this suit, but think the boundaries are, some of them, wrong.

129 To 3rd int'y he answers: In the year 1877, in the month of Feb'y, I think, the land in dispute was worth twelve dollars and a half per acre. My means of knowing what it was worth was that I knew the land at that time and knew about what it would produce, &c.

To 3rd int'y he answers: Said land lies on the C. R. R. and embraces a portion of Sun Hill. It lies on the north side of R. R. The side of the R. R. which embraces this land is the most eligible place for a town or village, but there are a few lots on the other side that I had rather have. Portions of the other side of the R. R. are flat and swampy and portions of it are pretty well drained. The character of the side embraced in this suit is high and dry near the village—good building lots. I think these lots are worth twenty-five dollars per acre for building purposes. I think there — as many as ten acres of these lots.

To 4th int'y he answers: I don't recollect what the improvements were on the 6th Feb'y, 1877. There have been two stores put
130 up, one doctor's office, one dwelling-house. I think these improvements are worth about eight hundred dollars. I suppose that J. M. Minor occupies one of the stores, as I see him in there often. If anybody occupies the other store I don't know it. The doctor's office is occupied by Dr. Henderson, and the dwelling-house is occupied by C. D. Thigpen. There have been several different parties cultivating the land. C. D. Thigpen cultivates and has the management of it this year and has had one other year. I don't remember the date. There was a negro cultivating the land last year. I heard Minor say this negro was due him some rent.

To 5th int'y he answers: I am not able to answer this question; all I can say is that I have answered in the 4th int'y; there have been changes in the possession. C. D. Thigpen has had it two years and a negro one year. I don't know of my own knowledge that Jno. L. Hardee has assumed possession as against J. M. Minor or any one else since 1877. I have not observed any change except what I have already stated as to tenants.

To 6th int'y he answers: If he had any other property at
131 that time I did not know it that I now recollect.

To 1st X int'y he answers: My occupation is a planter. I estimate the value from my knowledge of the quality of the land and its locality. I did not buy; never have bought it or any similar tract. I am not a dealer in real estate, nor do I claim to be an expert. I bought nor sold any land in that locality in 1877, nor any since.

To 2nd X int'y he answers: I don't know what the population of Sun Hill is. If you go out to Martinsville, a negro quarter about ¼ of a mile from the station, I suppose there are about 75 in number. There are no persons there without homes or places of business that I know of. I don't know that there would be any lots needed to supply the annual demand. There are not a great many building lots outside of this land unless they were to go on the other side, on those low flat lands.

To 3rd X int'y he answers: I didn't profess to know what was

there in Feb'y, 1877, but know what has been put there since from seeing them. I do not look over the tract of land every day
132 and do not go there very often, only in the spring and in the fall. I suppose there are about 170 acres of said land cleared and the balance in the woods and old fields. In looking for structures I use the naked eye. I cannot say who stays in the houses, only, as I have already stated, that J. M. Minor occupies —, nobody the other store, Dr. Henderson the office, and C. D. Thigpen the dwelling. Dr. Henderson started to staying there the latter part of 1880, and C. D. Thigpen commenced staying in the dwelling the first of this year; the others I can't say as to dates.

To 4th X int'y he answers: I have not kept informed as to Mr. Hardee's actions, nor do I know anything about his business as regards this land.

To 5th X int'y he answers: I stated that if he had any other property at that time I did not know it. Minor was not in the habit of consulting me in regard to this business; he has talked to me, but I don't recollect what he said.

133 To 10th int'y he answers: My estimates of the value of the land and improvements is from my opinion, and what I said about Minor's having rent due from a negro was hearsay; everything else is from my own knowledge.

I. L. ADAMS.

Sworn to and subscribed before us this Oct. 14th, 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

W. JASPER HENDERSON, aged 38 years, being duly sworn, answers and deposes as follows, to wit:

To 1st int'y he answers: I know the parties.

To 2nd int'y he answers: I know the tract of land the subject of this suit; the value of that land on the 6th day of February, 1877, I think, was about fifteen dollars per acre. My means of knowledge is that I have cultivated it and have bought lands adjoining at that price.

To 3rd int'y he answers: Said land lies on the C. R. R. and embraces a part of Sun Hill; it lies on the north side of the R.
134 R. The side of said town embraced in said land I don't think is more eligible for a building site than the other side. The other side of the R. R. is, a part of —, low and flat, and a part of it is high. The character of the side embraced in this land is high and dry and is hilly and rolling and is not as suitable anywhere near the railroad as the other side for building purposes. I don't think the part of this land in and around Sun Hill embraces good and valuable building lots. I don't think I would value the lots right near the station much higher than I would the other land. I think there would be 8 or ten acre lots near the station suitable for that purpose.

To 4th int'y he answers: The improvements on this land on the

3th Feb'y, 1877, consisted in four or five tenant-houses, cribs, stables, &c., and a gin-house, to the best of my recollection. There have been placed there since two store-houses, one dwelling, one doctor's shop, all worth about seven hundred dollars. J. M. Minor occupies one store. I don't know whether the other store is occupied or
135 not. C. D. Thigpen occupies the dwelling and Dr. Henderson the office. I think Mr. J. M. Minor has exercised general possession, except the year 1878 Joseph R. Thigpen exercised general possession and control.

To 5th int'y he answers: As far as my observation goes, Minor was at that time and has been since in the possession except the year 1878, when J. R. Thigpen had possession. I heard Minor say he was acting as agent for Hardee. I don't know whether John L. Hardee has assumed possession as against J. M. Minor, only by what I heard Minor say, viz., that he was agent for Hardee, and I heard Joseph R. Thigpen say in 1878 that he had bought the place from John L. Hardee.

I have not observed any change in the management or control except what I have already spoken of.

To 6th int'y he answers: I don't know whether he had any other property at that time or not.

136 To 7th int'y he answers: I don't remember that I had any conversation with J. M. Minor at the time he made the deed to Hardee. If he ever stated for what purpose and object the deed was made I don't remember it. I don't remember that Minor ever told me that he made the deed to Hardee to secure money that he owed him or that he had any right to redeem it. There is no such man as W. L. Thigpen. W. R. Thigpen and J. R. Thigpen are brothers of J. M. Minor. I don't know age of J. R. Thigpen nor the age of J. M. Minor. J. R. Thigpen is a school teacher; he has been merchandizing some, farming some, and teaching school some since that time—Feb'y, 1877—and before that time he had merchandized some and farmed some. J. M. Minor has been selling guano, is postmaster, and R. R. agent, and he may have sold goods then a part of the time; I am not certain. I think he has changed from one store to the other as an office.

137 To 8th int'y he answers: J. M. Minor has, I think, had the management and control of this land since 1877, except the year 1878.

To 9th int'y he answers: J. M. Minor was living at Sun Hill on Nov. 5th, 1875, when the annexed affidavit was made, was cultivating the land in dispute, and was occupying as a storehouse the storehouse of B. J. Wilson, which at that time was the property of W. C. Riddle, and had rented nearly all the lands that W. C. Riddle had at that time, and it is impossible for me to say exactly what land is meant in this affidavit. I don't think the land in dispute has depreciated in value since that date. I don't think it was any more valuable at that time than it is now. I have bought similar lands further from the railroad and paid from 9 to 15 dollars per acre. This land, I think, is some more valuable than mine on account of its location near the railroad.

To 10th int'y he answers: I don't know of any facts going to show that the deed from Minor to Hardee was made to secure
138 indebtedness from Minor to Hardee.

To 12th int'y he answers: I know of nothing further that will benefit the complainant.

To 1st X int'y he answers: My occupation is that of a farmer. I lived near the land at that time and had farmed on that land before that time. I did not buy the 400 acres. I bought a portion of it once; it was in 1868. I bought it as a part of the Prince lands. I am not a dealer in real estate and am not an expert. I am not certain that I bought or sold any land in that locality in 1877. I have bought some there for two or three years about that time.

To 2nd X int'y he answers: I don't know what the population of Sun Hill is. If there are any people living there without homes or places of business I don't know it. I don't know how many business lots are needed to supply the annual demand. I don't know how many vacant lots outside of the lands in dispute.

To 3d X int'y he answers: I was acquainted and knew from my own observation what the improvements were at that time
139 and have been put up since. I do not look over the land every day. I think the land is about half cleared. In looking for new structures I use the naked eye. I have not stated who lived in the buildings, only that one store was occupied by J. M. Minor, doctor shop by Dr. Henderson, dwelling by C. D. Thigpen. I trusted to my memory.

To 4th X int'y he answers: I have not kept informed as to Mr. Hardee's actions and know nothing about his actions and know nothing about his business as regards this land.

To 5th X int'y he answers: I stated that if he had any other property I did not know it.

To 6th — int'y he answers: I don't know the date of the deed from Minor to Hardee; don't know whether there was one or two deeds; don't know that there was any deed made; don't know anything about the deed. I can't state for whose account Thigpen or Minor carried on business. I am not willing to swear that John L.
140 Hardee does not now own this land. I could not swear that Minor could not live on Hardee's land. I have seen one man living on another's land.

To 7th — int'y he answers: I was not present when said affidavit was signed or written; don't know who prepared it. I had no connection with it at all, except that I was a tenant of W. C. Riddle at the same time and made a like affidavit. No person ever told me that Minor signed said affidavit. I want the land I bought and bought it for that reason; both the fertility and proximity to the r'road make it valuable. I do not know that Hardee has often tried to sell this land at the price he gave for it and could not sell. I give my land in for taxation at five dollars per acre and swore that it was worth five dollars per acre. I paid cash for part of my land and give notes for the balance.

To 8th X int'y he answers: I don't know anything about the

trade. I was not present; don't know whether it — made verbally or by letter or anything about it.

141 To 10th X int'y he answers: My statements are from my own personal knowledge.

W. JASPER HENDERSON.

Sworn to and subscribed before us Oct. 14th, 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

142 *Answers and Depositions of H. K. Newsome, W. V. Tanner, Ira Walden, and J. Ben. Wilson.*

In the 5th Circuit Court of the United States for the Southern District of Georgia.

B. J. WILSON
vs.
J. M. MINOR *et al.* } Case.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of honorable the 5th circuit court of the United States for the southern district of Georgia. Taken and reduced to writing, in the village of Sun Hill, on this the 11th day of October, 1881.

H. K. NEWSOME, aged 52 years, being duly sworn, answers and deposes as follows, to wit:

To the 1st interrogatory the witness answers: I know the parties. 2nd. I know the land in dispute. I think the land in Feb'y, 1877, was worth twelve dollars per acre. I have known time — cleared up some of it; cut and hauled wood off of it and through it.

H. K. NEWSOME.

143 To the 3rd int'g'y he answers: The land lies right up and down the Central railroad on one side. It does embrace a part of the village of Sun Hill. It lies on the north side of the Central r'road. I think the site embraced in this land is the most eligible site for a town or village, but I would prefer a store on the other side. The other side of the railroad is low, and until Mr. Wilson ditched it was very low and wet. The side of this village on this land does embrace good building lots, but as to whether they are valuable I have some doubts. I have never seen much business done there. I think the lots right adjacent to the station would be worth twenty-five dollars per acre. I think there would be as many as ten one-acre lots suitable for building purposes.

H. K. NEWSOME.

To the 4th int'g'y he answers: There was one gin-house and some negro houses, I can't say how many, and one dwelling-house, a por-

tion of which, I think, is on the right of way of the C. R. R.;
144 two storehouses, one dwelling-house, one doctor's shop, one workshop, which was burnt last winter or spring, have been built since Feb'y, 1877. I think five or six hundred dollars will cover the whole improvements. One of the stores is occupied by *the* a negro woman who cooks for W. R. Thigpen; the other store is occupied by somebody doing a mercantile business. I don't know whether the goods belong to Thigpen, Minor, or who. The dwelling-house is occupied by C. D. Thigpen; the doctor's shop by Dr. J. R. Henderson. I have seen J. M. Minor superintending over this land more than anybody else. I have seen C. D. Thigpen cultivating said land, and have also seen a negro cultivating it.

H. K. NEWSOME.

To the 5th int'g'y he answers: I can't say who had the possession and control of said land on the 6th of Feb'y, 1877. Since that time I have seen J. M. Minor, C. D. Thigpen, and a negro on the land. I have not observed any change in the possession of said land from Minor to Hardee. Minor has not lived at Sun
145 Hill in two or three years. If John L. Hardee has assumed possession of said land since Feb'y, 1877, against J. M. Minor I do not know it of my own knowledge. I have not observed any changes except those already mentioned, viz., that I have seen C. D. Thigpen and at another time a negro cultivating the land.

H. K. NEWSOME.

To the 6th int'g'y he answers: I don't know whether J. M. Minor had any other property at that time or not.

To 1st X int'y he answers: My occupation is a farmer. I was at Sun Hill from two to three times a week for 4 or 5 years. I hauled wood through this land, as stated before. I have never bought this land, but have bought a similar piece of land three miles from Sun Hill in 1860. There has been very little change in price of land in this vicinity for twenty years. I know what the value of land —. I don't know whether I am an expert or not; can't remember that I bought any land in 1877; have not bought any since. I offered eleven dollars per acre for land two and one-half miles from Sun Hill sixty days ago—land of about the same char-
146 acter of this land, except that it was pine land, and *this* is some of it oak and hickory.

To 2nd X int'y he answers: I reckon there are between 50 and 100, including whites, blacks, railroad hands, and their families—men, women, and children of every class—living within half a mile. There are no persons living at Sun Hill without homes or places of business that I know of. I don't know of any one who wants to buy land at Sun Hill. I can't say how many new building lots are needed, for I don't know anybody who wants any. I don't think there are any business lots needed at Sun Hill to supply the annual demand. I don't know of any except what belongs to B. J. Wilson, on the other side of the railroad, and I don't know that he would sell.

H. K. NEWSOME.

To 3rd X int'g'y he answers: I was acquainted with the land in 1877. I don't look over this every day. I sometimes pass the road once a week. I don't know how much is cleared. In looking over the land I use the naked eye. There lives —. The dwelling,
147 a part of which is on the C. R. R. right of way, is occupied by W. R. Thigpen and family. The dwelling on the land is occupied by C. D. Thigpen. W. R. Thigpen's cook occupies one of the storehouses; the other store is occupied by J. N. Rogers as clerk, and the doctor's shop is occupied by Dr. Henderson. The other houses on this land is occupied by negroes. I don't — what their names are, nor how many. I relied on my memory and cannot give dates when they started to live there.

To 4th X int'g'y he answers: I don't know anything about Hardee's and Minor's transaction at all concerning this land.

To 5th X int'g'y he answers that Minor was not in the habit of consulting me.

H. K. NEWSOME.

Sworn to and subscribed before us Oct. 11th, 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

148 W. V. TANNER, aged 52 years, being duly sworn, answers and deposes as follows, to wit:

To the 1st int'y he answers: I know all the parties except John L. Hardee.

To the 2nd int'g'y he answers: I know the tract of land in dispute. The value of said land in Feb'y, 1877, I think, was twelve and a half to fifteen dollars per acre. I judge by its being near the railroad, and I have some near by that I ask $15.00 for.

To 3rd int'g'y he answers: It lies on the right of way. It does embrace a part of Sun Hill on the north side of the railroad. The side embraced in this land is, I think, the most eligible for building lots. The other side of the railroad is flat and marshy; the land on this side is high and dry. This land around Sun Hill does contain good building lots. I think it is worth one hundred dollars per acre for building purposes. I think there are ten or a dozen lots suitable for that purpose.

W. V. TANNER.

To 4th int'g'y he answers: I cannot recollect when these
149 improvements —; there are some houses on it. I am satisfied that there was one storehouse there at that time. There have been placed there since Feb'y, 1877, one dwelling-house and one doctor's shop and one store. The value of improvements placed there since that time are worth about ($500) five hundred dollars. J. M. Minor has had the control and management and control of these houses so far as I know. They have been occupied by other parties. I suppose they were tenants. I am not positive whether this storehouse was placed there since Feb'y, 1877, or not.

W. V. TANNER.

To 5th int'g'y he answers: J. M. Minor was in possession of this land in Feb'y, 1877, and, so far as I know, has had the possession of it since that time; no change in the possession that I know of. I don't know whether Jno. L. Hardee has assumed possession of said land as against J. M. Minor since 1877 or not. I know that C. D. Thigpen is farming on it, but I don't know whether he rents from J. M. Minor or Hardee or who.

To 6th interrogatory he answers: I don't know whether
150 J. M. Minor had any other property in 1877 or not.

To 1st X interrogatory he answers: My occupation is a farmer. I live close to the land and know and am acquainted with —. I am also an adjoining land-owner. I have never bought this land. I have bought land similar in its character for farming, but not in its locality. I lived near this land and knew the value of lands at that time. I am not a dealer in real estate, nor an expert. I bought land since 1877, but not sold any. I bought since 1877 395 acres in the same vicinity.

W. V. TANNER.

To 2nd X int'g'y he answers: I don't know the population of Sun Hill. I would say there were sixty or seventy. The people living — are not without homes or business places. I think they would like to go there, because I have application for some that is not so convenient. Col. B. J. Wilson and John Lawrence are the parties that tried to buy my land. Col. Wilson offered my son—so my son told me, that Col. Wilson thought it was worth as much as some acres he had, and he was willing to give me one
151 hundred dollars per acre for some land about 250 yards from the station. I agreed to take that price, and he said he was not quite ready. I don't know how many building lots are needed annually. There are outside of this land, suitable and convenient, ten or a dozen building lots on my own land just adjoining this land.

To 3rd X int'g'y he answers: I know, because I saw them, that there were improvements. I don't look over the land every day, but I see the houses near the station in passing frequently. I think the most—$\frac{2}{3}$ or more—of it is cleared. In looking for structures I use the naked eye. If there is any occupant for one of the stores I don't know it. The other store is occupied by Minor or Thigpen as a mercantile stand. The dwelling is occupied by C. D. Thigpen; doctor's shop is occupied by Doctor Henderson. The other houses on the place are occupied by negroes. I trusted to my memory and cannot give dates when they began to live there.

To the 4th X int'g'y he answers: I know nothing of Mr. Hardee's action in reference to said land and devoted no time to it.

152 To 5th X int'g'y he answers: I answered what I supposed. Minor was not in the habit of consulting me about his affairs.

To 10th X int'g'y he answers: It is based upon suppositions, because I never had any dealings with the parties as to the value of the land, and improvements I know of my own personal knowl-

edge. As to the other matters it is impossible that I should know from my own personal knowledge.

W. V. TANNER.

Sworn to & subscribed before us Oct. 11th, 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

153 IRA WALDEN, aged 72 years, being duly sworn, answers and deposes as follows, to wit:

To the 1st interrogatory he answers: I have looked over the affidavit annexed to the interrogatories and say that J. M. Minor, the affiant therein, is the same defendant in this suit. It was made in a proceeding by Col. B. J. Wilson against W. C. Riddle, in which Mr. Wilson was endeavoring to have the property of Mr. Riddle sold on the ground that it was deteriorating in value, and Mr. Minor made the affidavit to show that the property was not deteriorating in value.

IRA WALDEN.

To 1st X int'g'y he answers: I know what lands are referred to in the affidavit from the fact that I have been acquainted with the lands of Mr. Riddle for a number of years and know that Minor was a tenant of Mr. Riddle's at that time and attending to the farm on Mr. Riddle's place. I don't know what lands are referred to in these interrogatories, only from a rumor. At the time Minor made this affidavit he lived at Sun Hill, and I understood that he owned
154 the *the* tract of land now in dispute, and he was also at that time a tenant of Mr. Riddle on other lands. I don't know of my own knowledge what Mr. Minor owned at — time—whether he owned the land in dispute or any other land—only by rumor. I know nothing further that will benefit either complainant or defendants.

IRA WALDEN.

Sworn to & subscribed before us Oct. 11th, 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

155 J. BEN. WILSON, aged 32 years, being duly sworn, answers and deposes as follows, to wit:

To 1st int'g'y he answers: I know the parties.

To 2nd int'g'y he answers: I know the tract of land in dispute. I would say it was worth at that time from 15 to 17½ dollars per acre and maybe more. I judge it is worth that from what lands are valued at adjacent to the station of Sun Hill.

J. BEN. WILSON.

To 3rd interrogatory he answers: The land in dispute lies broadside on the C. r'road and embraces the larger part of the village

of Sun Hill. It lies on the northern side. The side on which this land lies is the most eligible site for building purposes. The other side of the railroad is low, flat, and swampy. The character of the land on the side of land in dispute is high and dry and well drained. There are some pretty building lots on the side on which this land lies. It — worth for building purposes, I would say, one hundred dollars per acre. There are, I think, twenty-five or thirty
156 lots of an acre each that I would call eligible and suitable building lots.

To 4th int'g'y he answers: There were at that time a small storehouse, dwelling-house, gin-house, a well-improved negro quarters or village, called Martinsville, of framed houses, barn, stables, and other negro cabins in another place on said land. There has been one storehouse, one doctor's office, and one dwelling built since. Between eight hundred and one thousand dollars, I think, is all that it cost to build such improvements. J. M. Minor occupies and uses said improvements and lands and has had general possession and control of it since 1877.

To 5th int'g'y he answers: J. M. Minor was in possession and control of these lands on the 6th day of Feb'y, 1877, and has been ever since, so far as I can judge. I have never known any change in the possession of the land since 1877, in Feb'y. I have heard that Minor had sold to Hardee, but he seemed to be in control all the while. John L. Hardee has not that I know of assumed
157 possession of said land against J. M. Minor or any one else since Feb'y, 1877. I have not observed any change in the management or control of said land since 1877.

To 6th int'g'y he answers: I do not know that J. M. Minor had any other property at that time of my own knowledge. I know of his bankruptcy about that time.

J. BEN. WILSON.

To the 10th int'y he answers: I know nothing further that will benefit the complainant.

To the 1st X int'g'y he answers: I was in 1877 a merchant. I was familiar with all this property, having been connected with my father in business, and have lived here ever since 1877. I came here in 1878. I never bought it or any similar tract. I have already stated that I was familiar with this land at that time and have lived here ever since. I am not a dealer in real estate, nor do I claim to be an expert. I did not buy any land in this locality in 1877 nor any since.

To 2nd X int'g'y he answers: The population of the village of Sun Hill, I think, is about 50 in number. There are no per-
158 sons living at Sun Hill living without homes or places of business. I have known persons who wanted to buy lots at Sun Hill. Christopher Guardo, H. O. Ward, and others employed about the lime-works of which I am manager have applied to the owners of land around Sun Hill to buy lots. I suppose there might be one or two building lots needed annually in the village of Sun Hill. There are no suitable building lots outside of this land nearer

than a quarter of a mile, except that there might be half a dozen storehouses built on the land of B. J. Wilson, on the south side of the railroad.

To 3rd X interrogatory he answers: I know what the improvements were on this land in 1877 and what have been put up since by seeing them. I do see this land more or less every day. I think there is 135 or 150 acres of it cleared; the balance of it is in the woods, old field, or native forest. In looking for structures I use the naked eye exclusively; one storehouse occupied by J. M. Minor & Co.; one storehouse occupied as a sleeping room by negroes;
159 one doctor's office occupied by Dr. Henderson; one dwelling occupied by W. R. Thigpen, and one other dwelling occupied by C. D. Thigpen, and other houses occupied by tenants, croppers, &c., on the farm.

To 4th X int'g'y he answers: I don't know anything at all about Mr. Hardee's business. I don't know whether he ever received any rent or how much or anything about it.

To 5th X int'g'y he answers: I stated that I did not know whether he had any other property at that time, and that I knew of his bankruptcy about that time. Minor was not in the habit of consulting me about his affairs.

To 10th X int'g'y he answers: My answers are based upon my own personal knowledge so far as I have spoken positively, and when I have not been positive to the best of my knowledge and belief.

J. BEN. WILSON.

Sworn to & subscribed before us Oct. 11, 1881.

O. H. ROGERS,
B. T. RAWLINGS,
Commissioners.

160 The following is endorsed on envelope:

U. S. circuit court—No. 675—so. dist. Ga. B. J. Wilson, compl't, *vs.* James M. Minor *et al.*, def'ts. Depositions of J. W. Henderson, W. V. Tanner, I. L. Adams, J. B. Wilson, H. K. Newsome, Ira Walden, witnesses on part of compl't. Washington Co., Ga. In equity. Filed the 13th day of Nov., 1880. To the clerk of the United States fifth circuit court, Savannah, Georgia: I, O. H. Rogers, one of the commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 18th day of October, 1881. O. H. Rogers, commissioner; B. T. Rawlings, commissioner. O. H. Rogers, commissioner, post office, Savannah, Ga.: Received this package by due course of mail this 18th day of Oct., 1881. L. M. Laws, P. M. Received by mail and filed this 18th day of Oct., 1881. W. M. Heyward, dep. clerk. Opened by consent without prejudice Nov. 9th, 1881. Geo. A. Mercer, solic. for J. M. Minor. Lester & Ravenel, sol's for compl't.

161 *Testimony Taken by Agreement—James M. Minor for Def't Anna E. Minor for Def't—April 15th,* 1881.

In the Circuit Court of the United States for the Southern District of Georgia. In Equity.

B. J. WILSON, Compl't,
and
JAMES M. MINOR *et al.*, Def'ts.

Interrogatories to be addressed to James M. Minor and Anna E. Minor, who reside in Washington county, more than one hundred miles from the city of Savannah, and who are material witnesses on behalf of the defendants in the above-entitled cause.

For both witnesses:

First interrogatory. Do you know all the parties to said suit, and how are you connected therewith?

Second interrogatory. Have you or not had any business connection or transaction with John L. Hardee relative to the sub-
162 ject-matter of this suit or involved therein? If yea, state the same fully, giving the information in your possession necessary to understand the same, with dates and details.

Third interrogatory. If in answer to the above you state you made any contract with said Hardee in writing concerning the subject-matter of said suit or connected therewith, then attach such writing or writings to your answer and identify the same, if in your possession, and if in the possession of any other person and you have a copy, then attach such copy, stating where the original is.

Fourth interrogatory. If in answer to the above interrogatories or either of them you state that you sold or conveyed any land to said Hardee, then please state whether or not there was any understanding or agreement on the part of said Hardee or yourself that the land so conveyed should be returned to you or that the deed to Hardee should be anything but an absolute conveyance of the land, free from all claims of any kind on your part. What was the
163 consideration for such deed? To whom does the land covered by it belong and to whom has is belonged since the deed was executed?

Fifth interrogatory. State every other matter and thing within your knowledge material to the said case and not heretofore stated by you as fully and explicitly as if specially interrogated thereto.

GEORGE A. MERCER,
Def'ts' Sol'r.

Complainant objects to the fourth direct interrogatory as leading and as seeking incompetent evidence, and to the fifth because it is not in form and is illegal. They object to this for same reason as fourth.

JAMES K. HINES,
LESTER & RAVENEL,
For Compl'ts.

Complainants propound- cross-interrogatories hereto annexed-.

164 *Cross-Interrogatories for James M. Minor.*

1st X int'y. Does not the land involved in this litigation embrace all the village of Sun Hill and depot station at # 12½, C. R. R., in Washington county, on the left-hand side of the right of way of said railroad as you go from Macon to Savannah?

2nd X int'y. Does not this land embrace nearly all the eligible buildings & store sites at Sun Hill?

3rd X int'y. Does not the Central railroad run through Sun Hill and divide it? Is it not true that the right of the railroad is low, flat, and swampy, and that the left is high, dry, and suitable for stores, residences, &c.?

4th X int'y. Are there not on this land two storehouses, one good dwelling, one doctor's office, one two-story workshop, & blacksmith's shop, and is not the place well improved?

5th X int'y. Have you not been in possession of said place since you sold to John L. Hardee? If not, who has and what rela-
165 tion to you is the party in *in* possession or who has been in possession since your sale to Hardee?

6th X int'y. Who first proposed for you to convey this land to Hardee? Did you make the proposition to him or he to you? Was the proposition made orally or in writing? If writing, please attach the writing to your answers to these interrogatories.

7th X int'y. Did you not at Sun Hill, shortly after you and your wife conveyed said land to Hardee, tell J. W. Henderson that you sold said land to Hardee to secure Hardee for your indebtedness to him, and that you had the right to redeem said land on the payment to him of your said indebtedness?

8th X int'y. How came your wife to join you in the deed to Hardee? Was it at your instance or Hardee's? Why did she join you in this conveyance?

9th X int'y. Please state when you first began to transact business with John L. Hardee or N. A. Hardee's Son & Co. What were the transactions? Annex to your answers to these inter-
166 rogatories itemized and detailed statements of *of* your dealings with Hardee or Hardee's Son & Co. for each year from year you began to deal with him or said firm to the present time, showing your indebtedness to Hardee and Hardee's indebtedness to you, all money, supplies, and advances from Hardee to you, and all money, shipments of cotton and other produce from you to Hardee or Hardee's Son & Co.

10th X int'y. How much were you indebted to John L. Hardee or N. A. Hardee's Son & Co. the 1st Jan., 1876? How much did you owe him or them 1st March, 1876?

11th X int'y. Did John L. Hardee know of the deed from you to yourself as trustee when you and Mr. Minor conveyed to him the land in dispute?

12th X int'y. Are you not on bad terms with Wilson?

13th X int'y. Was not a suit pending against you in the superior

court of Washington county at the time you executed a deed to John L. Hardee, to wit, on or about 6th of February, 1877, in which B. J. Wilson, the complainant, was plaintiff, on a promissory
167 note dated Feb'y 7th, 1871, or about that time, for twenty-nine hundred dollars and interest from that date, made by William C. Riddle and yourself, payable to B. J. Wilson or bearer, upon which judgment was obtained against you for the amount of principal and interest in March, 1877?

14th X int'y. Was any suit pending against you in the superior court of Washington county at the time you and your wife made the conveyance to John L. Hardee, in Feb'y, 1877? If so, by whom, for what amount, and where was judgment obtained?

15th X int'y. What other property had you at the time you conveyed the place to Hardee, in Feb'y, 1877?

168 *Cross-Interrogatories for Annie E. Minor.*

1st X int'y. How came you to join in deed with your husband to John L. Hardee, conveying him the land in dispute? Why did you make said deed?

2nd X int'y. Did you and your husband not make said deed to secure John L. Hardee all indebtedness due by your husband to him?

3rd X int'y. Does not the land in controversy embrace Sun Hill & # 12½ station—station C. R. R.?

4th X int'y. How much did you owe John L. Hardee Feb'y 6th, 1877?

5th X int'y. John L. Hardee knew you had an interest in the land in dispute when your husband and you conveyed to him. Was not this why you joined in the deed?

169 *Testimony of James M. Minor for Defendants.*

STATE OF GEORGIA, }
Washington County. }

In the Circuit Court of the United States for the Southern District of Georgia.

B. J. WILSON, Compl't, }
vs. } In Equity.
JAMES M. MINOR *et al.* }

By virtue of an agreement of counsel in the above-stated case for me as a disinterested person to act as sole commissioner to have executed the interrogatories hereto attached I have this day caused James M. Minor and Anna E. Minor, the witnesses named in said interrogatories, to come before me, and, they being duly sworn true answers to make to the interrogatories herein propounded, they each deposeth and answereth as follows, to wit:

JAMES M. MINOR, first examined, answers:

To 1st direct I know all the parties, and I am connected
170 as a party defendant with my wife, Anna E. Minor, John L. Hardee, *et al.*

To 2nd direct he answers: I have had business transactions with John L. Hardee for several years, and in the latter part of 1875 I was badly indebted to John L. Hardee, and at that time he was pressing me for a settlement and demanding money or deeds to real estate to secure it, and on January 5, 1876, in order that I might be able to carry on my business that year, I contracted with him to ship him three hundred bales of cotton of the crop of that year to pay him what I then owed him, and to secure further advances for the year I also contracted with him in case I failed to pay him out of the crop of that year (1876) that I would sell him the plantation now in controversy, at Sun Hill, or a sufficiency of the same to pay for said advances and commissions on cotton that I did not ship which I had contracted to ship. The above-mentioned contract was in writing and explains itself more fully; and on the 18th day of March, 1876, I did convey the said plantation mentioned in said
agreement by a voluntary deed to myself as trustee, for my
171 said —, Annie E. Minor, in the hope and belief that I would be able to pay off and discharge all my indebtedness out of the crop of 1876. The said voluntary conveyance was without pecuniary consideration and without the knowledge or consent of said John L. Hardee. It was understood between my wife, Annie E. Minor, and self that it was made subject to said John L. Hardee's contract; that neither of us ever intended to claim or could claim any part of said land as against the said Hardee in case I failed to pay all said indebtedness to said Hardee, which I failed to pay in accordance with said contract. I made him an absolute deed, conveying to him said land on the 6th day of February, 1877, in settlement of my notes and accounts, amounting to about fifty-nine hundred dollars ($5,900.00), my wife, Anna E. Minor, joining me in the deed as an evidence of her consent thereto, and the said John L. Hardee surrendered to me my notes and accounts for the same, duly cancelled.

To the 3rd direct he answers: In answer to the above I
172 did state that I made a contract with said Hardee on the 5th day of Jan., 1876, and that contract was in writing and I have the original, which I hereto attach, marked "Exhibit A."

To the 4th direct he answers: There was no understanding or agreement between said Hardee and myself at the time of making *to* the deed that said land so conveyed should be returned to me or that the deed to Hardee should be anything else but an absolute deed or conveyance of the land, free from all claims of any kind on my part, except that I was to retain possession the balance of that year (1877) of the place as agent for said Hardee, and with authority to sell said place for him and to pay the taxes on said place and to take full charge of the same as his agent.

The consideration for said deed, as I have before stated, — notes

and accounts held by said Hardee against me, amounting to about fifty-nine hundred dollars, which were past due, and, so far as I know or believe, the land conveyed in said deed now belongs to John L. Hardee, and has belonged to him since the deed was executed.

173 To 5th direct he answers: I know nothing more material to defendants.

JAMES M. MINOR, to cross-interrogatories, answers:

To 1st X interrogatory: The land involved in this litigation does not embrace all the village of Sun Hill and depot station at # 12½ C. R. R., on the left-hand side of the right of way of said road as you go from Macon to Savannah.

To 2nd X he answers: It embraces more building sites than below the road, but one of the best stores in the place is below the road, on the land of B. J. Wilson.

To 3rd X he answers: The Central railroad does divide the village of Sun Hill, and the right of said road as you come down from Macon is flat land and the left is high and dry. Either side is suitable for stores, &c. The first store, and first store built at the place, was on the lower side, and they stand there yet. The most valuable buildings are now on the lower side.

174 To 4th X he answers: There are 2 storehouses, 1 doctor's office, 1 two-story wood and blacksmith's shop. The place is not well improved. The aforesaid buildings are worth only about $700.00.

To 5th X he answers: I have been in possession of said place, as agent of John L. Hardee, all the time except the year 1878, when J. R. Thigpen was in possession.

To 6th X he answers: The proposition was first made by Hardee. The proposition to deed this land was orally made by Hardee.

To 7th X he answers: I did not so tell J. W. Henderson at Sun Hill, but I told him that I had sold Hardee my land in settlement of my indebtedness to him and he (Hardee) had authorized me to sell it for him, and Joseph Thigpen contracted, in March, 1878, to take it at six thousand dollars, and this conversation between Henderson and myself took place in the summer — 1878.

To 8th X he answers: It was at my instance that my wife joined me in the deed, because I had previously made a trust deed to myself as trustee for my wife and she had promised to relinquish

175 her rights under that deed, provided I had to sell to Hardee in compliance with our contract of Jan'y, 1876.

To 9th X he answers: I think it was in the year 1870 that I commenced business with N. A. Hardee, Son & Co. I received advances and supplies for making crops and carrying on mercantile business at Sun Hill, and I hereto attach all the papers showing the transactions between N. A. Hardee, Son & Co. and myself that I have or can find, marked "Exhibit B."

To 10th X he answers: I owed Hardee, Son & Co. about four thousand dollars on 1st January, 1876, and on 18th of March, 1876, I owed them between seven and eight thousand dollars.

To 11th X he answers he did not.

To 12th X he answers: I am.

To 13th X he answers: The suit was pending, but at the time of the trade I thought the suit was compromised between me and B. J. Wilson, as there was a contract made between us on the 4th day of August, 1876, in which I was to have three years to pay him fifteen hundred dollars in full satisfaction of said suit. Said contract was made in good faith on my part.

176 To 14th X he answers: Suit was pending against me in the superior court of Washington county at the time the deed was made to John L. Hardee, in Feb'y, 1877, by B. J. Wilson, for twenty-nine hundred dollars principal, and judgment was obtained March term, 1877.

To 15th X he answers: I do not remember all the property that I had at the time, but it consisted principally of horses, mules, cows, hogs, plantation tools, notes, and accounts.

JAMES M. MINOR.

Answered, sworn to, and subscribed before me April 15th, 1881.

CLEMENT C. BROWN,
Commissioner.

177 Mrs. ANNA E. MINOR answers:

To 1st direct she answers: I have no personal acquaintance with B. J. Wilson or J. L. Hardee; know the others. I am one of the parties defendant to the suit.

To 2nd direct she answers: I have never had any business connection with John L. Hardee, except the signing a deed to him from my husband, J. M. Minor, and I do not know where that deed is at this time.

To 3rd direct she answers: I have fully answered the 2nd direct.

To 4th direct she answers: There was no understanding between Hardee and myself that the land should be returned, or that the deed should be anything but an absolute deed, free from all claims of any kind on my part. I only know the consideration by the statements of my husband, J. M. Minor, telling me it was sold to pay a debt that he owed Hardee. The land belongs to J. L. Hardee now and since the making of said deed, so far as I know.

178 To 5th direct she answers: I know of nothing more material for the defence.

Cross-Interrogatories.

To 1st X she answers: Because I had promised my husband, J. M. Minor, at the time he made a deed in trust to himself for me, that I would join him in a deed to Hardee provided he failed to settle with Hardee and would have to comply with his contract to make Hardee the deed.

To 2nd X she answers: It was not to secure an indebtedness, but in payment of indebtedness past due.

To 3rd X she answers: It only embraces part of Sun Hill.

To 4th X she answers: I do not remember.

To 5th X she answers: John L. Hardee did not know that I had an interest in the land, and this is not the reason that I joined in the deed.

ANNIE E. MINOR.

Answered, sworn to, and subscribed before me April 15th, 1881.

CLEMENT C. BROWN,
Commissioner.

179 EXHIBIT A.

These articles of agreement, made and entered into this 5th day of January, A. D. 1876, between James M. Minor, of the county of Washington and State of Georgia, of one part, and John L. Hardee, of the firm of N. A. Hardee, Son & Co., of the county of Chatham and said State, of second part, witnesseth:

That the subscriber hereto, James M. Minor, party of the first part, for and in consideration of plantation supplies, monies, and guanos advanced to him to enable him to carry on his farming business and, during the year of 1876, as well as to assist him in carrying on his mercantile business at No. 12½ C. R. R., and to be advanced during the year of 1876, the said J. M. Minor, the subscriber hereto, agrees to ship and consign to the said N. A. Hardee, Son & Co. or John L. Hardee three hundred (300) bales of cotton to sell on commission and to pay for said advances; and should the said J. M. Minor fail to ship the whole of said 300 bales of cotton to said firm, then he agrees to pay them commission for selling the deficiency in the number not shipped same as if they had
180 been shipped. In consideration of the three thousand dollars ($3,000.00) to be advanced during the year of 1876, *and* it is further agreed and covenanted that in case the said James M. Minor, party hereto subscribed, should fail to make or control a sufficiency of cotton or money to pay said N. A. Hardee, Son & Co. or John L. Hardee, of said firm, out of the crops of present year of 1876 in full for all advances made to him by the said N. A. Hardee, Son & Co. during the year of 1876, then and in that case the said James M. Minor, subscriber hereto, for himself, his heirs, and assigns, agrees to sell to the said N. A. Hardee, Son & Co. or John L. Hardee his No. 12½ C. R. R. plantation, containing four hundred acres, being in Washington county, Georgia, and adjoining lands of W. V. Tanner, C. R. R., and others, or a sufficiency of said plantation to pay up in full for said advances made, at the price of ten dollars per acre, with all the appurtenances thereto, for the sum of ten dollars per acre, and will, on or before the first day of March, A. D. eighteen hundred and seventy-seven (1877), on the
181 receipt of the sum of ten dollars per acre, execute a proper deed of conveyance thereof, with a covenant of general warranty and against incumbrances, to the said J. M. Minor, his heirs, and assigns. It is also agreed that J. M. Minor shall pay all taxes and outgoings in respect of the premises for the years A. D. 1876 & 1877, and shall work the place and receive the rents or

profits on same in the years 1876 & 1877, and shall surrender same to said John L. Hardee, his heirs or assigns, on or before the first of January, 1878, in good repair.

In witness whereof the subscriber, James M. Minor, hereto have set his hand and seal the day and year above written.

JAMES M. MINOR.

Signed in presence of us—
A. H. TRAWICK, *J. P.*
D. M. SALTER.

Copy of Notes.

$2,080.76. SUN HILL, GA., *May 20th*, 1876.

On Aug. 1st, 1876, after date I promise to pay to the order of myself two thousand and eighty $\frac{76}{100}$ dollars, at the office of N. A. Hardee, Son & Co., without defalcation, for value received.

JAMES M. MINOR.

Endorsed on face:

Paid by deed to 400 acres of land at No. 12½ C. R. R., Feb'y 6, '77.

182 $2,100.46. SUN HILL, GA., *May 20th*, 1876.

On Dec. 1, '76, after date I promise to pay to the order of myself twenty-one hundred $\frac{46}{100}$ dollars, at the office of N. A. Hardee, Son & Co., without defalcation, for value received.

JAMES M. MINOR.

Written on face:

Paid by deed to 400 acres of land at 12½ C. R. R., Feb'y 6, '77. Void.

$552.78. SUN HILL, GA., *July 6th*, 1876.

On Nov. 1st, '76, after date I promise to pay to the order of N. A. Hardee, Son & Co. five hundred and fifty-two $\frac{78}{100}$ dollars, at their office, in Savannah, Ga., without defalcation, for value received.

JAMES M. MINOR.

Written on face:

Paid by deed to 400 acres of land at 12½ C. R. R., Feb'y 6th, '77. (Void.)

183 EXHIBIT B.

Mr. Jas. M. Minor in account current and interest account with N. A. Hardee's Son & Co., cotton factors and commission merchants, Savannah, Ga.

Date.	Items.	No. days.	Interest.	Amount.	Total.
	DR.				
1876.					
Nov. 25	To balance	73	106 05	4,357 58	
Dec. 8	" cash	60	11 20	559 30	
" 13	" balance note Minor & N.	55	2 57	189 74	
1877.					
Jan. 24	" charges guano	13		19 20	
" 25	" " "	12	38	38 40	
" 26	" " "	11		48 00	
" 31	" " "	6		38 40	
			120 20		
Feb'y 6	" balance of int. to date		15 80		
				104 40	
					$5,355 02
	CR.				
1876.					
Dec. 4	By 1 b. c.	64	80	37 50	
" 6	" 5 "	62	4 67	226 30	
" 12	" 1 " 43 30	56	1 59	85 20	
" "	" 1 " 41 90				
" 14	" 1 " 29 67	54	1 24	69 17	
" "	" 1 " 39 50				
" 16	" 2 " 91 80	52	3 50	207 80	
" "	" 3 " 116				
" 21	" 1 " 37 30	47	3 90	248 68	
" "	" 1 " 40 90				
" "	" 1 " 40 28				
" "	" 3 " 130 20				
'77.					
Jan'y 2	" 1 " 47 50	35	10	89 27	
" 2	" 1 " 41 77				
Feb'y 6	" bal. guano ac. per ac. rend.			208 00	
" "	" 5 b. c. 261 30			300 80	
" "	" 1 " 39 50				
			15 80		
" "	" balance due us			3,887 30	
					$5,355 02

E. & O. E.
Savannah, Ga., Feb'y 6th, 1877.

184 (EXHIBIT B.)

Mr. Jas. M. Minor, Sun Hill, Ga., in account current and interest account with N. A. Hardee's Son & Co., cotton factors & commission merchants, Savannah, Ga.

	Amount.	Total.
DR.		
To sales guano	3,690 00	
" freight on same	147 60	
" balance to your credit in P. A.	298 00	
		$4,045 60
CR.		
By sundry bales cotton.		
" C. 15c. & 14½, per statement	3,676 60	
" commission 10 %	369 00	
		4,045 60

E. & O. E. Savannah, Ga., Feb'y 6th, 1877.

185 Mr. James M. Minor in account current and interest account with N. A. Hardee's Son & Co., cotton factors & commission merchants, Savannah, Ga.

Date.	Items.	No. days.	Interest.	Amount.	Total.
1876.	DR.				
July 6	To your note due Dec. 1			2,100 46	
" "	" " " " Nov'b.	24	21 07	2,633 54	
" 11	" com.	137	2 35	51 62	
" 18	" sides, &c.	130	6 88	160 15	
Aug. 3	" tobacco	114	1 67	44 07	
" 18	" bagging	109	1 85	51 20	
Oct. 13	" cash W. W. Oer	48	1 07	66 70	
" 14	" " "	47	4 53	288 80	
" 24	" " prem. policies	37	31	25 89	
Nov. 4	" " Seymour, T. & C.	21	3 92	150 00	
" "	" Minor & Newsom (½ ac.)	"		410 30	
" 8	" cash, Walker & Co.	17	93	5 00	
			43 68		
" 25	" interest to date		21 20	22 48	
					6,010 21
	CR.				
Sept. 30	By 2 b. c. 93 90	56	4 15	223 30	
" "	" 3 " 129 40				
Oct. 5	" 1 " 38 30	51	4 20	246 80	
" "	" 6 " 208 50				
" 7	" 3 "	49	2 36	144 90	
" 13	" 1 "	43	74	53 60	
" 19	" 1 " 36 13	37	3 48	283 73	
" "	" 6 " 247 60				
" 23	" 1 "	33	36	33 80	
" 26	" 1 " 41 00				
" "	" 1 " 42 90				
" "	" 1 " 38 90	30	4 19	419 50	
" "	" 2 " 76 60				
" "	" 5 " 220 10				
Nov. 4	" 1 " 40 60				
" "	" 1 " 41 60	21	1 72	247 00	
" "	" 2 " 88 30				
" "	" 2 " 76 50				
" 25	" balance due us			4,357 58	
					$6,010 21

E. & O. E. Savannah, Ga., Nov. 25, 1876.

186 James M. Minor in account current and interest account with N. A. Hardee's Son & Co., cotton factors & commission merchants, No 6 Stoddard's Upper Range, Savannah, Ga.

1875.		Items.	Interest.	Amount.	Total.
		DR.			
M'ch	23	To due us this day	5 00	808 82	
"	"	" charges on guano	"	14 40	
Ap'l	7	" " " "	10	7 44	
"	9	" your draft due this day			
"	"	" due us, "Whitelock"		225 00	
"	"	" Oct. 15th & Nov. 1st, 2,961.60			
"	8	" int. to date		5 10	
"	"	" balance due us this day			1,060 76
		To due us this day		1,060 76	
		By am't ch'g's in said am't		279 24	
		Balance			$781 52
		To balance as above		781 52	
		" int. to Oct. 15, '75		54 50	
		Due us Oct. 15, '75			836 02
		Recapitulation.			
		To due as p. A. Oct. 15, '75		836 02	
		" " " cash charges		279 24	
		" " " Whitelock's guano		2,961 60	
		Total due N. A. H.'s Son & Co.			4,076 86

E. & O. E.
Savannah, Ga., April 8, 1875.

N. A. HARDEE'S SON & CO.,
Per JOHN M. BRYAN.

187 Mr. James M. Minor in account current and interest account with N. A. Hardee's Son & Co., cotton factors & gen'l comm. merchants, No. 6 Stoddard's Upper Range, Savannah, Ga.

Date.	Items.	No. days.	12 % interest.	Amount.	Total.
	DR.				
1875.					
May 22	To balance due this day	89	3 54	125 60	
" "	" your note Oct. 15 836 02				
" "	" Whitelock's 2,961 60				
" "	" bills pay. Dec. 1-4 1,038 09				
June 8	" corn, &c.	72	3 29	136 84	
" "	" " J. K. Pate	"	89	37 16	
July 13	" sides, &c.	37	2 50	201 48	
Aug. 9	" " "	10	57	163 08	
" 10	" flour (W. C. Riddle)	9	03	10 75	
" "	" do.	"	09	26 65	
" 19	" int. to date			10 91	
" "	" " " Oct. 15, 1875	60		14 23	
					$726 70
	Recapitulation.				
	To your note Oct. 15-18 (enclosed)			726 70	
	" " " Oct. 15-18			836 02	
	" due as Whitelock's			2,961 60	
	" bills payable Dec. 1-4, 1875			1,038 09	
	Total due N. A. Hardee's Son & Co.				$5,562 41

E. & O. E.
Savannah, Ga., Aug. 19, 1875.

N. A. HARDEE'S SON & CO.
JOHN M. BRYAN.

188 *Lease from John L. Hardee to W. R. Thigpen and James M. Minor.*

STATE OF GEORGIA, }
Chatham County. }

This indenture, made this fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, between John L. Hardee, of the county and State aforesaid, of the first part, and J. K. Thigpen and James M. Minor, of the above State, county of Washington, of the second part, witnesseth: That the said party of the first part, for and in consideration of the rents hereinafter reserved to be paid and the covenants to be performed by the said parties of the second part, hath demised, leased, and to farm-let, and by these presents do demise, lease, and to farm-let, unto the said parties of the second part all that tract of land lying and being in the county of Washington, known as # 12½ C. R. R. place, adjoining land of the estate of R. Maxwell, W. V. Tanner, B. J. Wilson, and others, containing four hundred acres of land, more
189 or less, and all improvements thereon:

To have and to hold said tract of land and improvements from the fourteenth day of April, in the year eighteen hundred and seventy-nine, for the full end to the first day of January, eighteen hundred and eighty-two (1882).

And the said party of the second part doth covenant and agree to pay to the said party, John L. Hardee, his executors, administrators, and assigns, the sum of five hundred dollars annually during the term aforesaid by the 1st of October of each year, and that without any abatement.

And the said parties of the second part do also covenant, for themselves and their heirs, executors, and administrators, to keep the premises in good repair while they do continue to occupy the same (fire, ordinary decay, and natural wear and tear excepted), and to return the same to the said party of the first part, his executors, administrators, and assigns, in such good repair, except as above excepted, at the end and expiration of this lease.

190 And it is further covenanted that the said parties of the second part shall not be at liberty to assign this lease or sublet said premises for the whole or any part of said term or place any tenant upon said premises without the assent of the said party of the first part.

And it is further covenanted that if default shall be made in the payment of the rents reserved to be paid within five days from the time the same shall become due, or if any of the covenants agreed to be kept by the said party of the second part in the foregoing indenture should be broken, it shall and may be lawful for the said party of the first part to determine this lease by twenty-four hours' notice in writing, and upon the giving of said notice this lease and every part and parcel thereof shall become void, except to enable the party of the first part to collect all rents which may be due up to the time of said notice, and upon such notice all rights of the

said parties of the second part shall cease and determine, and it shall be lawful for the said party of the first part to resume and retake possession of said premises, either by personal entry or
191 by any process under the acts of the General Assembly of the State of Georgia in that behalf provided.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

It is also agreed and understood by both parties to within lease that the parties of the second part shall have three years in which to purchase the said leased property now leased by them, and that the rent money paid during said three years shall be considered and applied in case of purchase by said parties of the second part as a part of the purchase-money, with interest thereon.

It is also understood that if at the expiration of three years the said parties of the second part are unable to purchase the said property at the price now agreed on as its value, say five thousand dollars, with interest from March 28th, 1878, then the money paid as rent during said lease shall be considered simply as rent of said place, and it shall be lawful for the party of the first part, his heirs, executors, or assigns, to resume and retake possession of said premises at once.

The party of the first part, his executors, heirs, and assigns,
192 also agrees and obligates himself not to sell or otherwise dispose of said property at any time during the existence or continuance of said lease except to the parties of the second part, their heirs, executors, or assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals.

JOHN L. HARDEE. [L. S.]
JOSEPH R. THIGPEN. [L. S.]
JAMES M. MINOR. [L. S.]

Witness:
L. A. WAKEMAN, *Not. Pub.*,
As to J. L. Hardee.

[Seal of L. A. Wakeman, Notary Public, Chatham Co., Ga.]

Witness:
W. M. ENGLISH, *J. P.*,
As to J. R. Thigpen & J. M. Minor.

193 *Lease of John L. Hardee to Green B. Thigpen and James M. Minor.*

STATE OF GEORGIA, }
Chatham County. }

This indenture, made this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-two, between John L. Hardee, of the county and State aforesaid, of the first part, and Green B. Thigpen and James M. Minor, of the above State, county of Washington, of the second part, witnesseth:

That the said party of the first part, for and in consideration of

the rents hereinafter to be paid and the covenants to be performed by the said parties of the second part, hath demised, leased, and to farm-let, and by these presents doth demise, lease, and to farm-let, unto the said party of the second part all that tract of land lying and being in the county of Washington known as the # 12½ C. R. R. place, adjoining lands of the estate of R. Maxwell, W. V. Tanner, B. J. Wilson, and others, containing four hundred acres of land, more or less, and all improvements thereon:

194 To have and to hold said tract of land and improvements from the eighteenth day of January, in the year eighteen hundred and eighty-two, for the full end and term of five years thence next ensuing.

And the said parties of the second part doth covenant and agree to pay to the said John L. Hardee, his executors, administrators, and assigns, the sum of five hundred dollars annually during the term aforesaid by the 1st day of October of each year of the lease, and that without any abatement.

And the said parties of the second part do also covenant, for themselves and their heirs, executors, and administrators, to keep the premises in good repair while they do continue to occupy the same (fire, ordinary decay, and natural wear and tear excepted) and to return the same to the said party of the first part, his executors, administrators, and assigns, in such good repair, except as above excepted, at the end and expiration of this lease.

And it is further covenanted that the said parties of the second part shall not be at liberty to assign this lease or sublet said

195 premises for the whole or any part of said term or place any tenant upon said premises without the assent of the said party of the first part.

And it is further covenanted that if default shall be made in payment of the rents reserved to be paid within five days from the time the same shall become due, or if any of the covenants agreed to be kept by the said party of the second part in the foregoing indenture should be broken, it shall and may be lawful for the said party of the first part to determine this lease by twenty-four hours' notice in writing, and upon the giving of said notice this lease and every part and parcel thereof shall become void, except to enable the party of the first part to collect all rents which may be due up to the time of said notice, and upon such notice all rights of the said parties of the second part shall cease and utterly determine, and it shall be lawful for the said party of the first part to resume and retake possession of said premises either by personal entry or by any process under the acts of the General Assembly of the State of Georgia in that behalf provided.

196 In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

It is also agreed and understood by both parties to the within lease that the parties of the second part shall have five years in which to purchase the said leased property now leased by them, and that the rent money paid during said five years shall be considered

and applied in case of purchase by said parties of the second part as a part of the purchase-money, with interest thereon.

It is also understood that if at the expiration of five years the parties of the second part are unable to purchase the said property at the price now agreed on as its value, say five thousand dollars ($5,000.00), with interest from January 1st, 1882, then the money paid as rent during said lease shall be simply considered as rent of said place, and it shall be lawful for the party of the first part, his heirs, executors, or assigns, to resume and retake possession of said premises at once.

197 The party of the first part, his executors, heirs, and assigns, also agrees and obligates himself not to sell or otherwise dispose of said property at any time during the existence or continuance of said lease except to the parties of the second part, their heirs, executors, or assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals.

JOHN L. HARDEE. [L. S.]
G. B. THIGPEN. [L. S.]
JAMES M. MINOR. [L. S.]

Witnessed as to G. B. Thigpen's & J. M. Minor's —:
W. M. ENGLISH, *J. P.*

Witness as to J. L. Hardee'- signature:
HENRY T. BOLTS,
Notary Public, C. C., Ga.

198 *Report of Master and Testimony Taken Before Him. Filed Nov. 19th*, 1881.

In the 5th Circuit Court of the United States, Southern District of Georgia, Eastern Division.

BENJ. J. WILSON, Complainant,
and
JAMES M. MINOR, Defendant. } In Equity.

To the Honorable John Erskine, U. S. judge, presiding, in chancery:

By virtue of an order of your honor, granted on the 29th day of December, 1880, appointing me "master in chancery" in the above case and therein authorizing and empowering me as such "master in chancery" to examine and take the oral testimony of all such witnesses as might be produced to me by either party and to call for and examine all such letters, books, and accounts as might be referred to in the testimony of any of said witnesses and as

199 might be material to the issues involved in said case and to report the testimony taken by me, I most respectfully submit to your honor that in obedience to said order I have examined John M. Bryan, A. H. Trawick, Benjamin J. Wilson, and John L. Hardee,

and also the letter-press books and ledgers B & C of N. A. Hardee's Son & Co. for the complainant, the said letter books and ledgers B & C containing respectively the correspondence of N. A. Hardee's Son & Co. and the accounts of James M. Minor and Joseph R. Thigpen with the said N. A. Hardee's Son & Co.

I also examined the defendant James M. Minor as a witness for the defendants.

I append hereto the testimony of each of said witnesses as reduced to writing, which is a full and correct statement of the facts as sworn to by each of said witnesses, all of which is certified to by me. I also append copies of letters of N. A. Hardee's Son & Co. to James M. Minor as copied from the letter-press books of said firm of N. A. Hardee's Son & Co. and a copy of a letter from N. A. Hardee's Son & Co., addressed to Benjamin J. Wilson, taken
200 from the original, and I also append a transcript of the accounts of N. A. Hardee's Son & Co. with James M. Minor and Joseph R. Thigpen as taken from ledgers B & C of said firm of N. A. Hardee's Son & C-., they being the only books of accounts in the possession of the said N. A. Hardee's Son & C-. having any relation to the accounts of James M. Minor and Joseph R. Thigpen with the said firm of N. A. Hardee's Son & Co., the said John L. Hardee having sworn that he has no other books of account with the said Minor and Thigpen.

I have certified to the testimony of each of said witnesses, which is attached hereto, and have also certified to the copies of the letters attached, and I have also certified to the copies of the said accounts as being correct transcripts from said ledgers B & C of said firm of N. A. Hardee's Son & Co.; which testimony of said witnesses and copy — letters and transcripts from said ledgers B & C — all certified and attached hereto. I respectfully submit the testimony taken by me in the foregoing case.

November 18th, 1881.

ALFRED B. SMITH,
Mastery in Chancery in this Case.

201 *Testimony of John M. Bryan.*

In the 5th Circuit Court of the United States, Southern District of Georgia, Eastern Division.

BENJ. J. WILSON, Compl't,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*, Defendants. } In Equity.

By virtue of an order of court appointing me master in chancery in the above case, and under the authority so vested in me, I have caused JOHN M. BRYAN, a witness for the complainant, to come before me, at Savannah, Ga., on the 22nd day of April, 1881, and he, after being duly sworn true and perfect answers to make to all questions propounded to him and to speak the whole truth, says: I have been in the employ of N. A. Hardee's Son & Co. for about fifteen years continuously and am now in their employment. I am con-

fidential clerk & book-keeper and have a general management of the business of said firm. The firm is solely composed of John
202 L. Hardee and does business in Savannah, Ga., as factors and commission merchants. I have the books of the firm for the year 1881 in my possession. I do not recollect how far they extend back. I do not commence with new books each year. Once I begin a book I continue it as long as there is space for writing in it; then I begin another. I have none of the correspondence of James M. Minor with said firm in my possession, nor have I one of Joseph Thigpen's with said firm. The house of N. A. Hardee's Son & Co. has had numerous business transactions with James M. Minor, who lived in Washington county, Ga.; his post office was Sun Hill, # 12½ C. R. R. I do not remember the exact character of the business done with Minor in 1875 & 1876; am of the impression that it was a contra- business. I do not know whether Minor's account with the firm has been closed or not. I recognize the amounts attached as exhibits to Minor's answer to the interrogatories; there are five of them, all marked Exhibit B and all in my writ-
203 ing. I know nothing of a deed made by Minor and wife to John L. Hardee at any time.

I know nothing of a mortgage made by Minor to Hardee, although I am and was at the date of their transactions the confidential clerk of Hardee, yet I have no knowledge of this matter—that is, the final arrangement between Minor and Hardee. I recognize the notes attached as exhibits to the answer of Minor to the interrogatories; there are three of them. I made the cancellation across the face of them; don't recollect the time it was done, but presume I did it at the time it purports to have been done. The cancellation was made by order of Mr. Hardee.

I do not remember the facts. I only know it from my writing on the face of the notes. I do not recollect any particular circumstances connected with the matter. I do not know whether Minor was present at the cancellation or not. I do not know what was done with the notes after the cancellation was made. I do not recollect that Hardee ever mentioned to me that Minor's
204 account had been closed by a sale of land or otherwise. I got the accounts from the statement books of N. A. Hardee's Son & Co. The accounts are usually verified by the ledger. I do not know whether my present ledger *continues* any account of James M. Minor or not. I do not know whether the present ledger runs back as far as the date of the accounts attached to Minor's answer. I have access to most of the notes. Mr. Hardee generally takes charge of the most important papers connected with the business. I recognize the notes attached as exhibits to Minor's answer; they are all in my writing. I wrote on them at Savannah and nowhere else. The firm of N. A. Hardee's Son & Co. keep a profit & loss account, but not in a separate book. We sometimes close accounts by carrying them to the profit & loss account. I do not recollect ever to have seen or heard of a paper which is attached to the answer of James M. Minor to the interrogatories purporting to be articles of agreement made by Minor on the 5th day of January,

1876, and purporting to have been made between James M. Minor and John L. Hardee.

205 Mr. Wilson, the complainant, called once and had a conversation with Mr. Hardee, to which I paid no attention. I know nothing of a conversation had with Joseph Thigpen in regard to a sale of the place. Mr. Wilson called on me for information in regard to the Minor matter. I had no information to give, and if I had had I would not have given it to him. I told Mr. Wilson I had no information.

I know nothing of any conversation in reference to a contract between Minor and Hardee.

The books from 1875 to 1880 are in Hardee's possession. I don't know where they are; I have made no search for them; they or some of them may be about the office. I have not examined for anything mentioned in the subpœna, because I did not have them under my control. There may be something about the office connected with this matter; I have made no search.

I certify that the foregoing six pages contain the testimony of J. M. Bryan, taken by me, at Savannah, Ga., on the 22d day of April, 1881.

ALFRED B. SMITH,
Master in Chancery in this Case.

206 *Testimony of James M. Minor.*

In the Fifth Circuit Court of the United States, Southern District of Georgia, Eastern Division.

BENJAMIN J. WILSON, Complainant,
and
JAMES M. MINOR & JOHN L. HARDEE *et al.*, Defendants. } In Equity.

By virtue of the honorable the court aforesaid appointing me master in chancery in above case and under the authority so vested in me I have caused JAMES M. MINOR, one of the defendants in the above case, to come before me, at Savannah, Ga., on this tenth day of November, 1881; that he, after being duly sworn to speak the truth, the whole truth, and nothing but the truth in the above case, says:

I am one of the defendants in this case. About the time this deed was made Mr. Hardee sent or gave me a contract to sign for 350 bales cotton to be shipped to him. I charged it and filled it out for 300 bales. This was in Sandersville on the day paper

207 bears date—5th of January, 1876. I signed this contract in presence of A. H. Trawick, J. P., and D. M. Salter, in Mr. Newman's store, in Sandersville. Both witnesses were present at the time. I can't remember who was present. I remember distinctly having a conversation relative to the matter and Mr. Trawick being called in to witness. Mr. Hardee wanted me to send him 350 bales cotton and manage the real estate. That is Mr. Trawick's signature. I saw him sign it. I told Mr. Hardee that paper had been executed. I think I sent or gave the paper to Mr. Hardee.

(R. E. Lester, for complainant, objected to Minor's testimony on subject of execution of instrument.)

My recollection is that Mr. Hardee returned the instrument to me in April or May, 1877, along with some other papers—some guano notes, etc. That paper was made in consequence of previous understanding with Mr. Hardee. In December, before this was executed, he was pressing me to settle my account by giving him a deed to the real estate to cover my account. I told him I was in business and did not desire to mortgage my property, but would give him deed to this
208 land. He said this would be satisfactory. This was in December, 1875. After I made this contract debts increased and I wanted more advances than I expected. In June I gave him a mortgage to some other property—some lands that I had an interest in with Mr. Newman and some others. This, I think, was in June, '76. Mr. Hardee got nothing out of this land. I am acquainted with the value of this land. I have been familiar with it since 1869. I considered six thousand dollars a big price for it. I know that because I tried to sell it for that. I tried to sell it to J. E. Witney. I said I wanted to sell it and get money for Hardee. He said he thought six thousand dollars a big price for it. The highest offer I had for it was six thousand dollars. I gave Mr. Hardee a notion as to its value. I think I owed him 9,000 or 10,000 dollars. I had an interest in J. E. May's place and some other property. I told him I thought the whole worth some 10,000 or 12,000 dollars. I did not include notes, but other property I had I thought was worth $10,000 or $12,000. I don't think I said
209 this place by itself was worth this much. I said I thought the place worth his debt. Mr. Hardee offered to take it and let me have it back for that, but I could not raise the money for it. I moved away in 1877 to the Irwin place. I left the place in charge of C. B. Bacon as agent for Hardee. Jos. Thigpen built the post office there and a small store was put there, I think, in '77 or '78—after Hardee had the deed. They were put there by Jo. Thigpen & Bacon. During 1877 Hardee had found out that Wilson had a mortgage upon it. It was the first he knew of any incumbrances. He wanted me to sell the place. I tried to sell it as agent for Hardee; never tried to sell it except as his agent. After some time my brother, Charley Thigpen, who had got $1,200.00 or $1,500.00 ahead, thought he would like to buy it if he could make terms to suit him. He consented to buy it by paying $1,000.00 down and giving two notes for $2,500.00 each. That was in '78. I was trying to sell it as agent for Hardee. Just before selling the place to my brother I saw Wilson's attorney. I understood Wilson wanted it, and I told him he
210 could get it by paying the amount I owed Hardee. I had this conversation with R. L. Rogers; he is in Atlanta now. My brother wanted to know what it could be bought for. I told him it cost Hardee about six thousand dollars, and he would take that much for it; that I thought he would take that for it. He came here with me and we went to see Mr. Hardee. I told Mr.

Hardee that was just what I had been offered for it; that he could get one thousand dollars down and the land was there for the balance—$1,000.00 cash down and the balance in two notes. He was not able to pay the notes when Hardee demanded it of him; he could not comply with the contract, so Hardee took the place back. Hardee gave a lease to my brother till January, 1882. I went in with him as joint tenant. Hardee knew me, and I consented to go in with my brother. We were to pay $500.00 annually; all has been paid except a small balance. The improvements were put on the place in '78; Jos. Thigpen put some there and C. B. Thigpen put some there; they were put there with a view that we
211 would be able to pay for the place. The other parties agreed to put a wood-shed there, taking the rent as payment, or until the rent should pay for it. There is a doctor shop—Dr. Henderson built a shop there with the same understanding. He put up the shop and paid for it, agreeing to let the rent pay him. The lease is in writing. When I executed deed in 1877 I owed Hardee, according to his statement, $5,800.00, including guano notes, &c.

I gave a mortgage upon mules, etc., on a separate account. I owed him other accounts; the mortgage on mules had nothing to do with this deed; I owed him other accounts besides the one for which this deed is given; this land was sold in payment of notes and accounts. I think he requested me to take the mules in 1877 and pay him. I sold some to Dr. Chisholm; he paid the money to Hardee. In February when I made deed, I thought I would ask for bond for titles to reconvey it again. I wanted him to give me 12 months to work it out, but I could not raise a dollar toward it; he de-
212 clined to give bond for title; he never gave one. After he declined to give it I wrote to him to send me notes, &c., cancelled. In reference to affidavit made by me in '75 on motion to appoint a receiver, I desire to say that has nothing to do with this land now in litigation. I did not live here that year. I worked it as my land that year; that refers to W. C. Riddle's land. I was doing business on south side of Central railroad, on W. C. Riddle's plantation. I ran several plows on his place. The house I lived in was on Central railroad right of way, on land given to Central railroad. My place was on south side of railroad. I ran about 20 plows *of* W. C. Riddle's place and 3 plows on this land that is now in litigation, which is my own land. The affidavit is about W. C. Riddle's place; it had nothing to do with this place. I only tried to sell this land as agent for Hardee. I never tried to control it in my own right. Since 1877 I nor my family have lived on the land in controversy. I have been to station sometimes in the year. I am station master and postmaster, and that is the reason of my
213 being there. The station is on this land. I am agent and postmaster, and I have an interest in the station there. I have not been upon the land at all. I look after it and see that it is cared for as agent for Hardee. I pay taxes on it as his agent. I think my brother paid taxes on it the two years he had it.

Cross-examination:

I was to pay taxes besides rent—taxes and $500.00 rent. I never spoke to Mr. Wilson about it. I have no interest in it except my interest with my brother. If my brother does not comply with his lease it will be Hardee's land—if he does not pay the $5,000.00 he agreed to pay for it. I promised Mr. Hardee I would defend the titles and to protect my brother. I don't think my brother is able to fight it himself. I expected him to borrow the money to pay for it. I have not got the money to lend him. In '76 I was farming and merchandising at #12½. My business in '77 was farming on the Irwin place. I did not farm at 12½. Charles Thigpen had the place; he rented it from me.

214 I think the contract will show how much he paid for it. Mr. Hardee got the rent from Charley in '77. I don't know how much it was. Charley sent him cotton. I don't know whether he sent it in my name or his own. I was farming that year. I farmed on the Irwin place, about two miles off. I farmed there in '78; in '79 at Mr. Riddle's place. In '77 Charley Thigpen had the place, and he and Jo. Thigpen in '78 and '79. In '77 I had no other business but the post office and railroading. I did very little merchandizing that year. I kept a few things in '77. Charley was on the place. It was my business to be there. It was the same store I kept in '76. I did not pay any rent till the deed was made to me in '77. We paid rent for it after. The store is on the other side of railroad. It is Mr. Wilson's. It is a part of the Sun Hill tract, but has nothing to do with Hardee's land. I sold 400 acres land. I bought 450 acres from Riddle, but it only ran out 400. The land where the store is I had no title for land. I was there as

215 Mr. Riddle's tenant. I suppose it is Riddle's; it is in litigation. Mr. Riddle claimed the land at that time, in '75, where I kept the store. I was renting store on south side of railroad in '75. Mr. Riddle claims it now. I am merchandizing there now. My store is on north side. The store I am in was built in '78. I was in '76 on the other side; I won't be positive about '77. I have not had as much control of the place as before I sold it. Before I sold it it was mine. I have control of it as his agent. Hardee said he wanted me to make the best I could out of it. He wanted $500.00 rent, but he would rather have the money than the place. He gave me the refusal of the place if I thought I could pay for it. He said he was tired of taking worthless notes and securities. He said, You can build or do anything of that kind. That was after deed was made.

I owed Mr. Hardee $5,800.00; that was the statement he rendered me. I have paid nothing to reduce it. My brother paid one thousand dollars and at close of year was to pay $2,500.00.

216 Hardee took the place again, and then said he would take the place back and rent it, and asked if I would go in with him. I don't think I owed him anything. He says there is $5,000.00 due; that if we pay him $5,000.00 on first of January we can take the land. I signed the contract in Newman's store. I was

in Sandersville on general business. I don't remember especially why I was there. I have a good many papers to have witnessed during the year; carried the paper home and brought it to Hardee, I think, in June, '76. I brought it myself. He returned it in April or May, '77, along with a lot of other papers, guano notes, &c., in a package together. He did not mention it specially in his letter. I am certain he never sent any special letter about it. He generally said, "Enclosed please find," &c. I wanted him to send all papers belonging to me. I had a conversation in December, '75, then or about then. I had an understanding that I was to secure him. I got paper in January, '76.

217 I believe the deed I made covered all the Sun Hill land I claimed. There was a piece of land that could not be considered a part of that that I sold to Mr. Henderson. I was offered, as agent of Hardee, $5,000.00. I told him I thought it was worth $5,000.00 or $6,000.00. I did not think it was worth any more. I told him my whole concern was worth $10,000.00 or $12,000.00. I am speaking of 1876. I told him that the lands I claimed, my live stock, mules, &c., was worth $10,000.00 or $12,000.00. I did not include notes and accounts. I don't remember what my indebtedness was in '76 In March, '76, my property consisted of this place I sold to him. I had a place known as May's place and some mules, stock of goods, &c. I don't remember how much I owed. I expect I owed as much as I was worth or more, perhaps. When I made the deed I thought it was worth $5,000.00. I was offered $5,000.00. I was not offered more than that. I talked to Wilson's attorneys about it; asked him if he had spoken about it, to see how much he would give for it. I am not certain but what I told Rogers that if he

218 would get Wilson to buy the place and hold it I would try and work out some way and take it back. I don't know if Wilson knew of this or not. Rogers was Wilson's attorney, but I don't know if he told him. If my brother paid $5,000.00, what he first paid was to be part; if he did not pay all, it was to go as rent. This other land I mortgaged and deeded to Hardee was in June, 1876. I mortgaged an interest in some land I had; it was described as Roger's place; the deed will show it. I don't remember what this land was worth. My interest would have been 2 or 300 acres. Hardee was asking for collaterals for all that I owed him. I made him an absolute deed in 1876 for my interest. I don't remember the consideration. It was to secure the same debt this other was given for. I don't know what has become of it. I have searched diligently for it, but can't find it. I may have destroyed it. It was recorded in Washington county. I don't remember making any other deeds but these two. J. R. Thigpen paid one thousand dollars on his purchase. I don't know when he got it. I don't

219 know whether he owed anybody for it. I think he owed part of it. I don't know to whom. He said he had not been able to pay it of himself. He may have got it from Woodbridge. I know he owed him some money afterwards. I live on the right of way of the C. R. R. The house has always been there. I lived

there in '75 & '76. In '77 I moved off. That is part of the Sun Hill tract. It does not go across the road. I moved my family off in '77, January. I still keep possession of it. I made the deed in February and put Charley Thigpen in possession. It was understood that I was to manage it that year. When I sold it to him he wanted me to hunt a buyer. I said he would much rather have the money than the place. I wanted him to give me a bond for title. He would not give it to me. I told him I would try and raise the money so as to take it off his hands, but I never raised a dollar. There was a very good understanding between us, only that he wanted the money. He wanted me to sell or take the place and give him the money.

He understood that place was in litigation and understood how
220 much I had been offered for it when I deeded it to him. He said all the time that he would rather have the money. He would not give me bond for title, but reserved the right to sell it to whom he pleased. He objected to my having any right to make titles until he had his money. The money was the $5,800.00 debt, the balance of his running account against me. I don't know whether the notes were in a running account or not. The notes were for several hundred tons of guano I had bought and given him notes for. I had a statement of my account. He rendered my statement and said he wanted matters closed. I told him I saw no chance for me to pay it. I had land, and if he would take it I would go home, make out deed, and send to him; that was in '77. He said all he wanted was his money; if I could not pay it that he would take the land, and if I would pay the money I could take the land back. At that time I was not able to pay him. I owed W. W. Gordon &

Co.; they got a mortgage to a piece of land. I put the land
221 in for $4,000.00; that was in the contract. What I owed him was $5,800.00, but he was only allowed by contract $10.00 per acre. There was 400 acres. He said he would accept the land in full settlement. I told him I thought it worth 5 or $6,000. In notes and accounts I owed him only about $6,000.

The agreement with Mr. Wilson about settlement, I think, was in '76. I went to work with a determination to pay off all I owed—everybody. My desire was to pay every man all I owed him, but I failed to do it. I tried to pay Mr. Wilson, but I could not. I asked Mr. Hardee to pay him for me, but he wouldn't. I wanted to pay both. It took all the land to pay Mr. Hardee. I am fighting it because they say I made a fraudulent deed for the principle of the thing. I don't think the land worth more than 5 or $6,000. I think it is worth that much now. I don't think anybody will offer more than that for it.

The house is on the railroad right of way; it is on the original right of way—on an acre of land I gave to the railroad in 1874 or

1875 to get them to build a warehouse there. The house was
222 built before I gave it. I think I gave a deed in '74 or '75 to A. R. Wise. He was supervisor. We were trying to get a warehouse built, and I told Mr. Moore I would agree to give the C. R. R. an acre of land for building a warehouse. I gave an absolute deed to C. R. R. I don't know if it was recorded. I don't re-

member who witnessed it. I guess it will show for itself. I claimed the land at the time openly. I think I paid taxes on it. There was a contract between Riddle and myself about that time. I made a contract to sell it to him. I don't remember what time this was. I think I returned it as my land. I am not positive, but I think I did. I don't remember how long I returned it as my land. I paid taxes in '76 last as my land. I have paid taxes since then as agent for Hardee. I don't remember when I paid first. I took land from Riddle in '69. I gave contract, promising to return it to him. He was to have five years to pay me. I think he paid taxes on it for four years. The contract was in the courts during the controversy.

223 I don't know when it expires. It will show for itself. Yes; this was a part of the Sun Hill tract. A part of the house was on it and part on railroad right of way. I was claiming this as my property when I gave it to C. R. R.

He (Riddle) never put this in mortgage to Mr. Wilson. It was never in mortgage. The boundaries of his mortgage does not call for this place. I claim it in deed and would have claimed it in latter if it was in any mortgage. The deed from Riddle was placed on record, I think, in '74 or '75; it may have been in '76; it was after litigation had commenced. Mr. Wilson was trying to say this was included in mortgage when it was put upon record. The store-house was built by my brother and myself. My brother paid for it. I think I did some of the hauling for him. He paid me for what I did. I let my wagons and teams haul for him. I think I planned it for him and got hands to build it. He paid the hands. I did not superintend it all together. I advised and assisted him. I was there a good deal of this time with my other business.

Redirect:

224 The deed expresses $4,000.00; he claimed $5,800.00. I admitted I owed him that. A deed was to be taken for entire amount I owed him. In previous contract I agreed to sell it at $10.00 per acre; it made but $4,000, but it was to cover the full indebtedness.

——— ———.

I certify that the foregoing eighteen pages of writing contain the testimony of James M. Minor, taken before me, at Savannah, Ga., November 10th, 1881.

ALFRED B. SMITH,
Master in Chancery in this Case.

225 *Testimony of A. H. Trawick, J. P., for Complainant.*

In the 5th Circuit Court of the U. S., Southern District of Georgia, E. D.

BENJ. J. WILSON, Compl't,
and
JAMES M. MINOR & JOHN L. HARDEE *et al.*, Def'ts. } In Equity.

By virtue of an order of the honorable the court aforesaid appointing me, Alfred B. Smith, master in chancery in the above case, and under the authority so vested in me, I have caused A. H. TRAWICK, a witness for the complainant, to come before me, at Savannah, in the State of Georgia, on the 10th day of November, 1881, and who, after being duly sworn to speak the truth in the above case, says:

I was a justice of the peace in Washington county on the 5th day of January, 1876. I had been a J. P. some time before that date and held the office until January, 1881. I know of no other person of the name of A. H. Trawick in Washington county, Georgia. I was the only A. H. Trawick, J. P., in that county
226 on the 5th of January, 1876. I have examined the paper attached to the interrogatory of J. M. Minor, purporting to be a contract dated 5th January, 1876, said contract marked "Exhibit A," and purporting to have been made between J. M. Minor and John L. Hardee, of the firm of N. A. Hardee's Son & Co. I have examined the signature of A. H. Trawick, J. P., on said paper. That signature is not mine; it is not in my handwriting. If I had put it there it would be in my handwriting. I have no recollection of having seen the paper at this time. I have no recollection of ever having witnessed a paper between Minor and Hardee about that time or at any other time. I can say the signature is not my handwriting.

I do not recollect being at "Sun Hill" at or about the date of said paper. I have been at "Sun Hill." I live fourteen or fifteen miles off from that place. I do not know D. M. Salter, the witness whose name appears as a witness to the paper dated January 5th, 1876. My custom has always been when I sign my name
227 officially as a witness to sign last. I never made an "H" like the one on the contract. I never make an "A" exactly like the one on the contract or paper dated 5th of Jan'y, 1876. The letter "r" is different from the way I make it. I do not make "w" in that way. I always make an "r" thus: "r." I have several papers here on which my name is signed officially, and they show in what manner I sign my name. They are papers appertaining to public business, and I ask that they be preserved and returned to me. I selected them indiscriminately from others. I was J. P.

in district 100, G. M. "Sun Hill" is in district 93, G. M. James M. Minor lives in the 93rd if he lives at "Sun Hill" or lived there at that time. I do not know who was J. P. in 93rd dist., G. M., at that time. There was no man named D. M. Salter living in the 93rd district at that time (Jan'y 5th, 1876) that I know of.

Cross — by MERCER, for def't Minor:

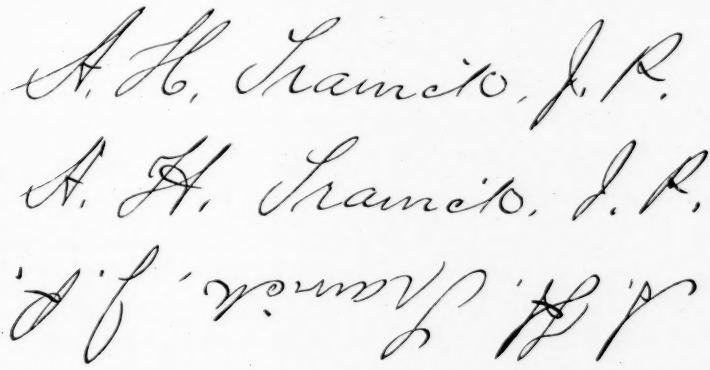
I have witnessed papers outside of my district; have witnessed them at Sandersville, Ga.

I do not recollect witnessing a paper for J. M. Minor at
228 Newman's store. I recollect witnessing a paper for J. M. Minor about two years ago. I do not remember all the papers I have witnessed officially. I have seen the paper attached to the interrogatories before. It was shown me by G. R. Hines, Esq., of Sandersville. I don't know how he got possession of it. I stated to him that my signature was not on it. I have looked through my papers, and did not find an "H" made like the one in the paper dated 5th Jan'y, 1876. I think I can swear that I don't make an "H" in this way. I don't know the handwriting in the body of the paper or the signature thereon. I don't know in whose handwriting A. H. Trawick, J. P., is. The letters "wick" in the name Trawick resemble my handwriting. The letters "J. P." have some resemblance to the letters J. P. which I sometimes make. (Witness writes his name on opposite sides of a sheet of paper, which is hereto attached.) I can't remember all the papers I witnessed in 1876. I can't recollect any particular paper I witnessed in Sandersville in 1876.

229 Re-examined by LESTER, for complainant:

In making the letter H, I never commenced with a downward stroke. The papers I witnessed for Mr. Minor one or two years ago is not the paper attached to the interrogatories; don't think it is, because I know the paper I witnessed does not bear date so far back and because I don't recognize my signature. I don't recollect the other witnesses to the last-mentioned paper. Mr. Minor came to me and asked me to witness a paper for him. I don't know what that paper *it* was. If the paper dated 5th January, 1876, is the paper it has been dated back. The paper itself is not in my handwriting. I am familiar with handwriting. I have seen people write and have examined papers. I am not an expert, unless this makes me one. I have examined the signature and also the body of the instrument and can't say whether it be in the same handwriting or not. It appears to be not the same handwriting.

Mercer, counsel for the defendant, objects to the testimony of this witness as an expert and objects to his opinion of the hand-
230 writing.



Sworn to and subscribed before me, at Savannah, Ga., the 10th day of November, 1881.

ALFRED B. SMITH,
Master in Chancery in Above Case.

I certify that the foregoing seven pages—six in writing—contain the testimony of A. H. Trawick, taken before me at Savannah, Ga., Nov. 10th, 1881.

ALFRED B. SMITH,
Master in Chancery in this Case.

The following papers are those referred to by the witness, A. H. Trawick, as showing his genuine signature:

STATE OF GEORGIA,
Washington County.

Justice's Court, 100th Dist. G. M.

To all and singular the constables of said county, Greeting:

You are hereby commanded of the goods, chat-els, lands, and teniments of James W. Mills you levy by distress and sale
231 thereof sufficient to make nine $\frac{60}{100}$ dollars principal, one $\frac{49}{100}$ dollars interest; also two dollars costs of suit, which was adjudged against him at the justice's court held on the 21st day of February, 1874, in favor of Ainsworth and Rettman; also thirty-five cents for issuing this writ. Have said sums of money, together with this *fi. fa.*, on or before the third Saturday in next month, to render in full satisfaction for said debt and costs.

Given under my hand and official signature this Feb'y 26th, 1874.

A. H. TRAWICK,
J. P., 100 *Dist.*

STATE OF GEORGIA,
Washington County.

Justice's Court, 100 Dist., G. M.

WILLIS F. TAYLOR
vs.
WILSON D. WALKER, C. C. BROWN.

To all and singular the constables of said county, Greeting:

You are hereby commanded of the goods, chat-els, lands, and tenements of W. D. Walker, principal, and C. C. Brown, security, on bond you levy by distress and sale thereof sufficient to make twenty-six dollars principal and two dollars and seventy-five cents
232 interest, which was adjudged against them, which has been paid over to said W. D. Walker upon his given bond for the forthcoming of said twenty-six dollars, with interest, payable to W. F. Taylor, which was adjudged against R. F. Garrett, garnishee, on the 17 day of Oct., 1874; have you said sum of money, together with this *fi. fa.*, on or before the third Saturday in this month, to render in full satisfaction — said debt and all costs.

Given under my hand and official signature this Jan. the 5th, 1876.

A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

Justice' Court, 100 Dist.

To all and singular the constables *to* said county, Greeting:

You are hereby commanded of the goods, chat-els, lands, and tenements of John S. Mills you levy by distress and sale therefor sufficient amount to make thirty-six $\frac{67}{100}$ dollars, principal; interest, two $\frac{28}{100}$ dollars; also two dollars and five cents costs of suit, which was adjudged against him at the justice's court held in said district on the 28th day of November, 1874, in favor of Brantley and Pringle; also thirty-five cents for issuing this writ; have you said
233 sums of money, together with this writ, on or before the third Saturday in the month, to render in full satisfaction for said debt and all costs that may accrue.

Given under my hand and official signature *the* Dec. 3d, 1874.

A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

Plea of Dr. Wm. W. Carr.

To the hon. justice of (100) dist. G. M.:

I never did buy, bargain, or order any White's planters and guano distributors from E. T. Alling, so help me God.

The facts of the case are these: In 1870, some time in March, I wrote to J. B. Sholter, as he was owing me some money, to send me

two cotton planters of White's pattern. I never got the planters in time to plant with & countermanded the order. I afterwards saw Sherlock in Milledgeville and told him I did not get them and they were at the depot. He wished me take them and sell them for him.

234 I took them home and paid the freight and hired a workman to put a stock to them and tried them to sow some cotton seed about an hour in '71. I found them to be worthless from being made from damaged material. I could not get an offer for them. I afterwards saw Sherlock and told him they were good for nothing and he could send for them at my house or I would send them on my waggon whenever it went to Milledgeville. I put the things in an outhouse, for I did not want them and told Sherlock so. He told me to get a blacksmith to fix a plate on the broken part and he would pay for it and then sell them for him. I told him the last time I saw him — Milledgeville that I could not get a smith to take them, and to send for them. He said he had sold out all his interest. I told him to send for them, for they were not worth hal*l*ing.

DR. WM. W. CARR.

Sworn to and subscribed before me this July the 14, 1873.
A. H. TRAWICK, *J. P.*

I certify that the four pages hereto attached are those referred to in the interrogatories of A. H. Trawick as containing his signature.
ALFRED B. SMITH,
Master in Chancery in this Case.

235 *Testimony of B. J. Wilson, for Compl't.*

In the Fifth Circuit Court of the United States, Southern District of Georgia, Eastern Division.

BENJ. J. WILSON, Complainant,
vs.
JOHN L. HARDEE & JAMES M. MINOR *et al.*, Defendants. } In Equity.

By virtue of an order of the honorable court aforesaid appointing me, Alfred B. Smith, master in chancery in the above case and under the authority vested in me, I have caused BENJ. J. WILSON, the compl't, to come before me, at Savannah, Ga., on the 10th day of November, 1881, and he, after being duly sworn to speak the truth in the above case, says:

I am complainant in this case. I recollect that an attempt was made to settle it about August 4th, 1876. I was at Sun Hill and had a conversation with Mr. James M. Minor, the defendant, which resulted in the following agreement:

236 STATE OF GEORGIA, }
Washington County. }

AUGUST 4TH, 1876.

It is hereby agreed between B. J. Wilson, of the late firm of B. J. Wilson & Co., and James M. Minor as follows: Should the said Minor pay to the said Wilson five hundred dollars on or before the first day of September next and five hundred dollars by the first day of October, 1877, and five hundred dollars on October 1st, 1878, the said Wilson will release him from all liability on his note signed by himself and W. C. Riddle for $2,900 some time in 1871, but should he fail to pay as above the said Minor will not be released from any portion of the said note.

(Signed) B. J. WILSON.
(Signed) J. M. MINOR.

Signed in duplicate.
Test: (Signed) B. M. HILL.

The first attempt at payment was by draft on N. A. Hardee, Son & Co., which was dishonored and returned to me. I notified Mr. Minor of this fact and got no reply. No part of the agreement was ever complied with. I think Hardee & Co. knew that Minor was
237 indebted to me at the date of the deed. (This objected to by Mercer, for def't.) I wrote to J. L. Hardee about it. (Objected to.) I had conversations with Hardee before Feb'y 6, 1877, in reference to Minor's indebtedness to me. I know that I sent draft to him and he refused to accept. J. M. Minor resided at the place at "Sun Hill" from 1874 up to the time of above contract; he did move away; he remained on the place for a long time after the date of the deed; he continued to control the place. I have been there frequently and have seen him there. I know the land conveyed by Minor to Hardee on Feb'y 6, '77; its value at that date, I think, was about $10,000, and cheap at that. I claim the land as mine and would not have taken that sum for it. I claimed it is subject to my mortgage against W. C. Riddle. When I say I would not have taken $10,000 for it, it is because it is worth more. I have experience in the value of lands. I speak from experience, from having traded in lands. This land is situated at "Sun Hill" station, on the north side of the C. R. R., at # 12½. At that time there was a gin-house, a small
238 store, a fine dwelling, and a number of tenement-houses and other improvements on the place. If there had been no houses it would have been worth $10,000. Situated as it *were*, with improvements, it was worth more. Mr. Minor offered to buy the land at $15.00 per acre. I had a mortgage against Riddle for the land; it was subsequently claimed by Minor and adjudged to be his on the trial of the claim. After the decision of the foreclosure against Riddle Minor offered me $15.00 per acre for the land around "Sun Hill," including this land; this was in spring of 1876, after the date of the judgment of foreclosure. I refused this offer after Minor claimed it as his property. At the date of Minor's deed to his wife I think he was insolvent; he told me he could not pay me unless I

compromised with him. At the time of the date of the deed he had mules which belonged to Mr. Hardee. Minor told me he was in failing circumstances and thought of going into bankruptcy. He went into voluntary bankruptcy about the second of April, 1878. I don't know who paid for the im-
239 provements on the place. There was a doctor shop, worth $125.00; one large mercantile storehouse, valued at $600; one dwelling-house, worth $350.00; one wood and blacksmith shop, worth $100. I saw Hardee's mortgage on Minor's personal property after the date of the deed. It was on mules and other property. After the date of the deed from Minor and wife I had an interview with J. L. Hardee as to Minor's affairs, and he showed me a deed and a mortgage on mules. (Mercer, for def't, objects to Hardee's admission against Minor.) Minor was not present. Hardee said Minor owed him about $4,000.00. I requested Hardee to press the mortgage. He said he had heard that the mules were dead, and refused to do so. He told me he had a deed to other lands and he thought there was nothing in the mortgage; said he had deeds to other lands. (Mercer objects to contents of deed.)

Affidavit of Minor attached — interrogatories of Ira Walden *et al.*, dated Nov. 5th, 1875. Affidavit shown to witness. He says it was made by Minor; Minor made it. (Object- to by Mercer as being irrelevant.) Affidavit was made on an application for a
240 receiver in the case of Wilson *vs.* Riddle, the object of which was to show whether or not the lands were depreciating in value, which land was occupied at that time by Minor as tenant for Riddle. The entire Sun Hill was in dispute. Minor lived upon the land at this time, and he claimed it as his at date of affidavit, Nov. 5th, 1875.

Cross-examined by MERCER, for def't:

In 1877 or 1878 Jos. Thigpen lived on the land with Minor; Minor lived on it in 1875. I don't know when Minor and family moved. When Thigpen was living in the house it was on the Sun Hill place. I don't know where they live now. I can't say where Minor & family have lived since 1877. I always found him at the Sun Hill place transacting business as usual. I claim to own the land on the south side of the railroad at ≠ 12½. I have sold some of it 4 miles off from the railroad at $10 per acre. If my titles to the property there is good it is worth $75,000. I claim to own 10,000 acres.

241 Re-examined by LESTER, for complainant:

When I say that J. R. Thigpen lived on the place I do not mean that he cultivated the place; he seemed to exercise authority over the place. J. M. Minor had no other place of transacting business but at "Sun Hill." J. R. Thigpen & J. M. Minor are brothers. I have always thought J. R. Thigpen to be a man of no visible means. He was so in 1877 & '78. I knew he had no means, because we took him as security for a small claim of about $30.00, which we

never got. We did not bring suit on it, learning from many sources that he had no property. The Sun Hill lands are more valuable than other parts of the lands on south side of C. R. R.

I certify the foregoing seven written pages to contain the testimony of B. J. Wilson, taken before me, at Savannah, Ga., November 10th, 1881.

ALFRED B. SMITH,
Master in Chancery in this Case.

242 *Testimony of John L. Hardee, for Compl't.*

In the 5th Circuit Court of the United States, Southern District of Georgia.

BENJAMIN J. WILSON, Complainant,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*, Defendants. } In Equity.

By virtue of an order of the honorable the court aforesaid appointing me master in chancery in the above case and under the authority so vested in me I have caused JOHN L. HARDEE, a witness for the complainant, to come before me, at Savannah, Georgia, on the third day of November, 1881, and he, after being duly sworn true and perfect answer to make to all questions propounded to him and to speak the whole truth, says: I am one of the parties named in this suit. My business for the past ten years has been that of a commission merchant and cotton factor in Savannah, Georgia, under the firm name & style of N. A. Hardee's Son & Co. During that time
243 I have had dealings with James M. Minor, who lives at #12½ Central railroad, Washington county, Georgia, Sun Hill post office. I write to him at that place. I believe he lives there now. His name was formerly Thigpen; it was afterwards changed to Minor. I have all my letters of correspondence and books of accounts with James M. Minor from the time of the fire, in 1876, which occurred about the 27th of August, 1876. My books and correspondence prior to that time, except my ledger, were burned and destroyed in that fire. The ledger dates from 1872, and perhaps longer. It contains all my accounts down to July 2d, 1877, when the accounts were transferred to a new ledger.

The Ledger Book B produced, from which transcripts are to be taken; Ledger Book C produced, from which transcripts also are to be taken.

Ledgers B and C contain the statements of all my transactions with J. M. Minor. I took a deed from Minor for the land now in dispute, dated February 6th, 1877. The deed purports to be executed in Washington county, Georgia. I was not in Washington county at
244 that time; think I was in Savannah. The negotiations in regard to the trade were mostly, if not altogether, personal. Minor came to see me in reference to it about the first January, 1877. My correspondence with James M. Minor is to be found

in letter books from No. 1, commencing September 21st, 1876, to Book No. 9, ending October 15th, 1879.

(George A. Mercer, solicitor for def'ts Minor, objects to all testimony which seeks to impeach the testimony of J. L. Hardee, a witness for complainant.)

I had a contract with Minor, which I drew up prior to the date of the deed, in which Minor agreed to let me have the land if he did not deliver me (300) three hundred bales of cotton and pay up his indebtedness within a certain time. The paper attached to Minor's interrogatories, purporting to be an agreement between him and myself, dated January 5th, 1876, was never in my possession. I never saw it until I saw it in this record. I do not know what became of the paper which I drew up. The paper which I drew embodies the contents of the paper attached to the interrogatories of Minor. I think I have the letters of Minor up to the date
245 of the filing of the suit and will produce them. Some important letters have been destroyed. I had no written correspondence with Minor except that which is to be found in the letter books. My impression is that the deed came to me through the mail after the date of the deed. I got the deed a few days before it was recorded; the deed was recorded on the 4th of March, 1877. I did not close Minor's account at that time, but continued it and charged interest on the indebtedness, expecting Minor to settle his account; the account was closed March 28th, 1878, by profit and loss. I surrendered the draft attached to the interrogatories of J. M. Minor at the time I received the deed. At the time I took the deed I knew nothing of Minor's indebtedness to B. J. Wilson. I may have heard that Minor and Riddle had a lawsuit, the particulars of which I knew nothing. (A letter from Hardee to Wilson, dated September 9th, 1876, produced and to be copied.) The books show the rate of interest charged against Minor at the time I took the deed. I had an understanding with Minor
246 that he could have the land on payment of his indebtedness to me and the interest thereon, and I am willing to do that now. *My* promise- to give Minor a bond to reconvey the land, but I failed to do so. The consideration of the deed was Minor's indebtedness to me, as shown by the books. When I took the deed from Minor I agreed to sell the land to J. R. Thigpen for six thousand dollars ($6,000.00). J. M. Minor knew of this arrangement; both Minor and Thigpen were present; the negotiations were made with Thigpen. I believe he is a brother of Minor. I have heard Minor call him brother. I took J. R. Thigpen's notes for the land. He failed to pay the notes. He paid me one thousand dollars as rent. I am not certain that Thigpen paid me any money at the time we negotiated the trade for the land. J. R. Thigpen's account on Ledger "C," page 20, will be found — my transactions with J. R. Thigpen. On the first of January, 1879, when J. R. Thigpen failed to meet his notes, I resumed possession of the place by agreement between Thigpen and myself. I was to have possession if he did not pay. I did not take possession myself in

person. I don't know who took possession for me. I
247 don't know who occupies the place now. I don't know whether Thigpen or Minor took possession. I claim the place as mine and claim rent from Minor and Thigpen. Minor paid rent to me. He paid $500 for 1879 and $500.00 in 1880. He paid in cotton and money. These payments were made in October of each year. J. R. Thigpen payd $500.00 for rent in the fall of 1877 for rent of that year. He paid in cotton shipped to N. A. Hardee's Son & Co. He was charged with the rent and credited with the proceeds of the cotton. The true condition of J. R. Thigpen's account is to be found in Ledger C, page- 20 and 327. The notes appear on page 20. The notes charged to J. R. Thigpen are the notes taken for the place. The notes bear date March 28th, 1878; two of them for $2,500.00 each. He paid $1,000.00 in cotton. One note became due January 1st, 1879, the other January 1st, 1880. I credited Thigpen with all he paid.

The amount of $5,944.92 represents the balance due by Minor according to my books at this date.

(Written lease from Hardee to Minor and Thigpen for this land, dated April 14, 1879, produced and a copy to be taken.)

248 This is the only lease I made of the property; I made it soon after I took possession of the place. Minor and Thigpen were both here present. I have no other account on my books of this matter except those already referred to. I have collected $400.00 for the rent of 1880; $100.00 is yet due. I have received no other money from Minor and Thigpen on this transaction. The three notes attached to the interrogatories of Minor, one dated May 20th, 1876, for $2,080.76, payable November 1st, 1876; one for $2,100.46, payable December 1st, 1876; the other for $552.78, due November 1st, 1876, were given on the day they bear date and represented the balance due by Minor at that date, with interest added to November 1st, 1876. The account was not closed by the notes. The interest was bank rates at that time. The books will show that the books submitted will contain all the correspondence from me except some private matters. I once had a mortgage on personal property given by Thigpen many years ago. The mortgage was dated several years before the date of the deed and was to secure the payment
249 of from $1,300.00 to $1,500.00. Minor told me that the mules, &c., were all dead or gone. I have put no improvements upon the property. I know of no improvements having been put there by any one. I have never seen the place, and know nothing of it except from information received from others. At the time I took the deed Minor said he thought the place was worth $12,000.00. This was J. M. Minor. He said so again last winter. (To the sayings of Minor, Mercer, defendants' solicitor, objects.) I required that Mrs. Minor should sign the deed. My reason for this was I thought it would give me a better title. Minor proposed to sign the deed himself. I objected unless Mrs. Minor would sign also. I required that she should join in the conveyance, and Minor assented to this. He proposed to give me a deed to the land. I said, Yes; I

will take it if Mrs. Minor will sign also; to which he assented. My account was originally about $6,000.00; received one thousand from J. R. Thigpen, leaving about $5,000.00. The amount of
250 rent I received is $1,400.00, all of which appears by the books except the rent account of $1,400, which is my private account. I knew nothing of the deed made by Minor to his wife until I read it in the record in this case.

Cross-examined by MERCER, defendants' solicitor:

The contract which is attached to Minor's answers to the interrogatories embraces in substance the contract which I prepared myself and sent to Minor for execution. The contract which I prepared was never returned to me, nor was any other contract sent to me that I recollect of. In the pressure of business I may have overlooked the matter, but finding at the end of the season that the indebtedness had not been paid and that the 300 bales of cotton had not been shipped I then insisted upon an execution of the terms of the contract, which was possession of the place. The subject-matter of the contract had often been discussed between Minor and myself, and was previously understood between us.
251 It was my intention to take an absolute title to the property and not security for the debt. (To this statement of intention Lester, for complainant, objects.) I have never entered into any agreement or contract with Minor which prevented said deed from being an absolute title. (To the above Lester, for complainant, objects.) As far as my recollection serves me I had a verbal understanding with Minor that he could redeem the place on payment of his indebtedness. I consider the place my property. I have claimed it as mine since the date of the deed and thought I could do with it as I pleased. I have told Minor several times that I would sell it if he did not pay up the amount which I had agreed to let him have the place for.

My reason for keeping Minor's account open after the date of the deed was this: My balance-sheet is given me once a month by my book-keeper, and it has been my habit for years to keep accounts still open upon my books, some of which have long since been settled by deeds to property or considered very doubtful, in order
252 that those accounts may be kept constantly before my eye, which would not be the case if they were carried to profit & loss, or suspense account, and thus I collect, from time to time, amounts from doubtful parties which would not otherwise be paid if not constantly called on. The account of J. M. Minor was not closed until March 28, 1878, because I wished to keep it before me, hoping to find him some day in a condition to redeem the place, I not wishing to have my money locked up in country property; it was closed, however, on the 28th of March, 1878, and found to show a balance on that day of about $6,000.00, which amount was assumed by his brother Thigpen, to whom I agreed to sell the place. When I took the deed I thought the land was worth more than the debt. I was satisfied it was worth at least the amount of the debt. My knowledge of the value of the property is from information derived from

persons with whom I have conferred. I have several plantations which I hold in the same way, and which I have never seen and have been getting rent from six to seven years. At the time
253 of the date of the deed from Minor to me I did not know that Minor owed Wilson anything.

Redirect by LESTER, for complainant:

I do not recollect whether I sent the contract to Minor by mail or not; if I did the letter book will show it. I don't remember the date of it. At the time I took the deed I had an understanding with Minor that he could redeem the place if he would pay the debt, with interest. No time of payment was specified. I did not want the property; I wanted the money. Minor has paid me rent. One of my objects in keeping the accounts of persons open after they had given absolute deeds was to allow them to redeem the same if they could. By the terms of the lease which Minor holds I am not at liberty to make a deed of this property to any other person than Minor. The lease makes this covenant. I knew nothing of Minor's pecuniary condition at the time he made the deed except that he could not pay his debt to me.

Recross-examination by MERCER, — def't:

At the time of the making of the deed I told Minor I was
254 dissatisfied at his slowness in paying and that I required him to give me an absolute deed to the property, but that I would at any time take pleasure in reconveying it to him when he paid me the amount of his indebtedness, with interest. The deed which Minor gave me to the property was not at all or in any manner conditioned upon his right to redeem the property.

(To this Lester, for compl't, objects.)

The right I gave him to redeem was voluntary on my — and not a part of the obligation of my contract.

By LESTER, for complainant:

The conversations to which I refer were had with Minor in Savannah. The deed was made afterwards in Washington county and sent to me. These conversations were both before and after making of the deed. The substance of the conversation was: I demand a deed and you can redeem the land if you can. Minor imposed no conditions upon me. I demanded that he should give me a deed. I voluntarily told him he might redeem the land. Minor made no condition precedent. Minor sent me the deed on my own proposition. I know nothing of Minor's indebtedness to others and did not connive, combine, and confederate with
255 — or any other person to perpetrate a fraud.

I certify the foregoing to be correct.

ALFRED B. SMITH,
M. in C., &c.

Copy of Lease from Hardee to Minor & Thigpen.

STATE OF GEORGIA, }
Chatham County. }

This indenture, made the fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, between John L. Hardee, of the county and State aforesaid, of the first part, and J. R. Thigpen and James M. Minor, of the above State, county of Washington, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents hereinafter reserved to be paid and the covenants to be performed by the said parties of the second part, hath demised, leased, and to farm-let, and by these presents do demise, lease, and to farm-let, unto the said parties of the second part all that tract of
256 land lying and being in the county of Washington, known as #12½ Central railroad place, adjoining land of Estof R. Maxwell, M. V. Tanner, B. J. Wilson, and others, containing four hundred acres of land, more or less, and all improvements thereon:

To have and to hold said tract of land and improvements from the 14th day of April, in the year eighteen hundred and seventy-nine, to the first day of January, eighteen hundred & eighty-two (1882), and the said parties of the second part do covenant and agree to pay to the said John L. Hardee his five hundred dollars annually during the term aforesaid by the first of October of each year, and that without any abatement.

And the said parties of the second part do also covenant for themselves, heirs, executors, and administrators to keep the premises in good repair while they do continue to occupy the same (fire, ordinary decay, and natural wear and tear excepted), and to return the same to the said party of the first part, his executors, administrators, and assigns, in such good repair, except as above excepted, at the end and expiration of this lease.

And it is further covenanted that the said parties of the
257 second part shall not be at liberty to assign this lease or sub-let said premises for the whole or any part of said term or place any tenant upon said premises without the assent of said party of the first part.

And it is further covenanted that if default shall be made in the payment of the rents reserved to be paid within five days from the time the same shall become due or if any of the covenants agreed to be kept by the said party of the second part in the foregoing indenture should be broken, it shall and may be lawful for the said party of the first part to determine this lease by twenty-four hours' notice in writing, and upon the giving of said notice this lease and every part and parcel thereof shall become void, except to enable the party of the first part to collect all rents which may be due up to the time of said notice, and upon such notice all rights of the said parties of the second part shall cease and utterly determine, and it shall be lawful for the said party of the first part to resume and retake possession of said premises either by personal entry or by any

process under the acts of the General Assembly of the State
258 of Georgia in that behalf provided.

It is also agreed and understood by both parties to within lease that the parties of the second part shall have three years in which to purchase the said leased property now leased by them, and that the rent money paid during said three years shall be considered and applied in case of purchase by said parties of the second part as a part of the purchase-money, with interest thereon.

It is also understood that if at the expiration of three years the parties of the second part are unable to purchase the said property at the price now agreed on as its value, say five thousand dollars, with interest from March 28th, 1878, then the money paid as rent during said lease shall be considered simply as rent of said place, and it shall be lawful for the party of the first part, his heirs, executors, or assigns, to resume and retake possession of said premises at once. The party of the first part, his executors, heirs, and assigns, also agrees and obligates himself not to sell or otherwise dispose of said property at any time during the existence or continuance of said lease except to the parties of the second part, their heirs,
259 executors, or assigns.

In witness whereof the parties to these presents have hereunto set their hands and seals.

J. L. HARDEE. [L. S.]
JOSEPH R. THIGPEN. [L. S.]
JAMES M. MINOR. [L. S.]

Witness as to J. L. Hardee:
L. A. WAKEMAN, *N. P.*
Witness as to J. R. Thigpen and J. M. Minor:
W. M. ENGLISH, *J. P.*

I certify the foregoing — pages in writing to be the testimony of John L. Hardee taken before me on the third day of November, 1881, and that the copy lease hereto attached is a copy of the original in the possession of John L. Hardee.

ALFRED B. SMITH,
Master in Chancery in this Case.

Copy — Letters from Hardee to Minor.

SAVANNAH, GA., *Sept.* 9, 1876.

Mr. B. J. Wilson, Atlanta, Ga.

DEAR SIR: A draft was presented to-day from J. M. Minor
260 on our house in your favor for $503, and we declined to pay.

We will pay the draft as soon as Mr. Minor has 100 b. c. in our hands, but cannot do so any sooner.

Very truly yours,
(Signed) N. A. HARDEE'S SON & CO.
B.

Letter Book # 2, p. 948.

March 14th, '7.

Guano.

12TH.

James M. Minor, # 12½ C. R. R., Ga.:

Deeds and notes as specified received, and for which please accept our thanks. Have sent deed to be recorded; as soon as recorded will send you bond for title. Permit the writer to again thank you for your consideration.

(Signed) N. A. HARDEE'S SON & C-.

Letter Book # 3, p. 386.

April 30th, '7.

30TH INST.

J. M. Minor, 12½ C. R. R., Ga.:

Enclosing notes for collateral, amounting to $2,052.00. Please let us know what you propose to do towards lessening your ac., now that the rent, cotton, or money cannot yet be obtained. The
261 balance against you is pretty heavy; you have sent us only 69 b. cotton this season. Please let us hear from you. Perhaps you had better come to the city and see us in relation to the ac.

(Signed) N. A. HARDEE'S SON & CO.

Same, p. 487.

MAY 11TH, '7.

J. M. Minor, Esq., # 12½ C. R. R., Ga:

Have you received the statement of ac. sent you and other papers? Have just seen Col. Warthen. He says the land deeded us by you & Mrs. Minor is claimed by Wilson and is now in litigation. We are very sorry to hear it, for we supposed the property to be unincumbered & free. From what Mr. Gilmore writes us it is not improbable we will soon get some money from the Holmes & Henderson cotton. Col. Warthen says the cotton was shipped to Duncan & Johnston. We certainly ought to have the money for your benefit and ac.

Very truly yours,

(Signed) N. A. HARDEE'S SON & CO.

262 Same, p. 542.

May 16th, '7.

15TH INST.

Jas. M. Minor, Sun Hill, Ga.:

Please accept thanks for your promptness in giving us the information in regard to the piece of property. We are pleased to learn that it is all right, and that Wilson cannot reach it. We wrote you yesterday enclosing a note for your signature. Please forward, together with the balance due as freight, as we wish to close the ac.

(Signed) N. A. HARDEE'S SON & CO.
BRYAN.

Letter Book # 5, p. 39.

November 30th, '7.

28TH INST.

J. M. Minor, Atlanta, Ga.:

We deeply regret to hear of your domestic affliction and trust Mrs. Minor will soon be restored to health.

Thanks for the evident good spirit and intentions manifested for us and your determination to meet your indebtedness. We note you will turn over titles to certain land to us as security. If any of your creditors are going to press you, you can deed us all *all* you
263 have, which we will hold as you suggest as security for our claim. We do not feel uneasy and still have the highest regard and esteem for you, whom we believe to be a good and valued friend.

Very truly yours,
(Signed) N. A. HARDEE'S SON & CO.

Same, p. 76.

DEC. 3, '7.

James M. Minor, # 12½ C. R. R., Ga.:

We enclose a statement of your ac., showing a balance due us of $7,268.00.

(Signed) N. A. HARDEE'S SON & CO.

Same, p. 224.

DECEMBER 14, '7.

James M. Minor, # 12½ C. R. R., Ga.:

You are due us to-day about $6,697.00, without interest from Dec. 1st.

You have 8 b. c. on hand yet to go to your credit, @ $45.00 per bale, $360.00. Balance still due, $6,337.00. Now, if you pay $3,000.00, there will still remain a balance of $3,337.00 at your debit and for which we will have scarcely any security if we
264 give up or transfer the deed to the parties proposing to loan you $3,000.00.

Of the 25 head of mules and horses how many have you now? Are they all living, or if any dead have you replaced them? We are willing to do all we can to oblige you, and if you cannot pay for all the guano with proper security we will carry over $1,000.00 to another season. That ought to enable you to pay all your private ac. in full or very nearly so. Of course, when the 10 b. c. you advise you will ship — your ac. will be still further reduced to that extent.

Very truly yours,
(Signed) N. A. HARDEE'S SON & CO.

Let us hear fully from you. The only deed to property we have which we value at all is the deed to the 400 acres at # 12½ C. R. R'd.

Same, p. 366.

December 26, '7.

24 & 26TH INST.

J. M. Minor, # 12½ C. R. R., Ga.:

We have written Mr. C. D. Thigpen, who will no doubt
265 show you our letter; don't see how we can do anything in the way proposed, except to keep his note and other papers as collateral & when paid credit amount to your ac. Your note we consider quite as good as his.

We will write Dr. A. T. Cheatham as you desire and send the letter registered; will send you his answer when we receive it.

(Signed) N. A. HARDEE'S SON & CO.

Letter Book # 5, p. 524.

JANUARY 9TH, '8.

James M. Minor, # 12½ C. R. R., Ga.:

We had an offer from Dr. Cheatham of $500 for the transfer of the papers of Green Riddle, Handy Jackson, Jordan Riddle, which we declined. You wrote us the papers were worth $700, and hence we want you to make the money for us at once.

We have now waited a long time for you to arrange your private & guano ac. We would be pleased to have you give us a list of the notes for guano which have been paid and a list of the unpaid.
266 We shall have to send a party to # 12½ to look after these notes and see what can be done with them. Of the 65 b. c. sent us, how much is for your private ac. and how much for your guano ac.?

We have been indulgent and kind in every way and we now beg you to arrange is a satisfactory manner a settlement of what you are due us.

With the tremendous advance made you it does seem extraordinary that you have been able to ship us only 65 b. cotton up to date.

We do not wish to say or do anything to wound your feelings, but we do think it is time for you to settle the ac.

Don't sell any Sea Fowl for this year until the ac. is arranged.

Very truly yours,

(Signed) N. A. HARDEE'S SON & CO.

Same, p. 561.

January 12th, '8.

16TH INST.

James M. Minor, # 12½ C. R. R., Ga.:

We don't desire to take the guano agency away from you,
267 but we cannot consistently let you sell unless some satisfactory settlement of the guano ac. of past season and of your private ac. is made.

Why can't you get all of your brothers to join and give a joint note with you for what you owe after paying up every dollar you can?

We would have supposed Dr. Cheatham would readily comply with his promise to you. Please see him & ascertain what he is going to do.

It is a source of regret to know you have been so badly deceived. We have still the greatest confidence in you, but simply ask, as a matter of justice, a full settlement in some way of all your ac. We are trying to get some one to go up to look after the notes, as it is impossible for the writer to do so.

Very truly yours,

(Signed) N. A. HARDEE'S SON & CO.

Sent Mr. Riddle $40.00 per to-day's express. Please send list of unpaid guano notes and list of cotton shipped. We have you credited with only 65 bales of cotton received. How much of this cotton is for guano and how much for your private ac.?

268 Same, p. 606.

January 16th, '8.

14TH INST.

J. M. Minor, # 12½ C. R. R., Ga.:

With enclosures a- stated.

You must get your three brothers to join with you in securing your indebtedness. Perhaps it may be best for you to come to Savannah and arrange your ac. after you have got all the money and papers ready.

There is no use of coming until you get everything in shape for a settlement. With such a terrible showing as your guano ac. we feel reluctant to continue the agency at # 12½. Unless the debts can be made perfectly secure we must decline to sell through you.

(Signed) N. A. HARDEE'S SON & CO.

Will your brothers give deeds to property to secure the debts?

How many mules are living which you deeded to us?

Letter Book # 5, p. 758.

JANUARY 29TH, '8.

James M. Minor, # 12½ C. R. R.:

We enclose a statement of your account, which shows a
269 balance due us of $5,836.13 to date. Mr. B. J. Wilson, of Atlanta, has to-day written us to know the extent of your indebtedness. We have reported the amount due as above $5,836.13.

We hope you will be able to get Mr. Wilson to arrange matters for you.

(Signed) N. A. HARDEE'S SON & CO.

Letter Book # 6, p. 717.

May 1, '8.

30TH ULTO.

J. M. Minor, # 12½ C. R. R., Ga.:

If Mr. W. should call to enquire in relation to our settlement I will give him all the information he can expect. We enclose copy of the letter you desire sent you; hope to hear of your soon being relieved from your embarrassment.

(Signed) N. A. HARDEE'S SON & CO.

Same, p. 905.

June 8th, '8.

6TH INST.

Jas. M. Minor, Sun Hill, Ga.:

We enclose the old notes duly cancelled. The other papers are in possession of Mr. Hardee, and we regret that he is absent;
270 will write him for them, and as soon as we hear from him will advise you.

(Signed) N. A. HARDEE'S SON & CO.

Book # 8, p. 221.

JANUARY 4, '9.

Mess. J. M. Minor & Bro., # 12½ C. R. R., Ga.:

The balance due us is still unpaid. In view of our past pleasant business relations we do not wish to take any action against you until we have given you the courtesy of due notice. We will wait one week longer, and if the ac. is not then settled we shall be obliged to proceed against you to protect ourselves.

(Signed) N. A. HARDEE'S SON & CO.

Book # 9, p. 345.

$300.00. APRIL 14TH, '9.

J. M. Minor & J. R. Thigpen, three hundred dollars on account of rent of plantation known as # 12½ C. R. R. place for year 1878.

(Signed) N. A. HARDEE'S SON & CO.,
Per J. M. BRYAN.

271 I certify the foregoing fifteen letters and one receipt to be correct copies taken from the press letter books of N. A. Hardee's Son & Co. addressed to J. M. Minor, and that the copy letter from N. A. Hardee's Son & Co. to B. J. Wilson is a copy taken from the original.

Nov. 12th, 1881.

ALFRED B. SMITH,
Master in Chancery in this Case.

272 James M. Minor. C. R. R. Page 68.

1873.						
June	25.	To trans.	folio	82...	2,411	44
"	"	" corn		89...	116	05
July	12.	" "		91...	116	05
"	15.	" sides		" ...	121	30
Aug.	6.	" bills pay. Sep. 1		1...	100	00
"	7.	" " " "		" ...	100	00
"	13.	" " " 15		" ...	129	30
Sept.	1.	" sides		97...	67	65
"	11.	" interest		98...	17	61
					3,179	40

Sept.	11.	To balance		1,771	81
	"	" B. P. Oct. 8–11	5...	162	
	17.	" " " 18	" ...	200	
	24.	" ink, &c	100...	16	90
	"	" B. P. Oct. 25	5...	73	08
	"	" " Dec. 24	" ...	506	95
	"	" " Oct. 25	" ...	277	16
	25.	" " Nov. 24	" ...	266	47
	"	" " Oct. 25	" ...	123	
Oct.	15.	" " De. 17	6...	300	
	22.	" bag- & ties	102...	269	60
Nov.	5.	" B. P. Nov. 19	8...	264	
	15.	" J. M. Minor, G. ac	459...	134	84
	19.	" " " "	462...	672	
	28.	" B. P. Dec. 31, '73	8...	82	85
Dec.	5.	" interest	121...	32	88
		Am't forward		5,153	54

273

1873.				
		Am't bro't forward	5,153	54
			5,153	54

1873.					
June	25.	By transfer	fol. 82...	1,147	59
Aug.	13.	" cash	385...	110	00
"	22.	" "	" ...	150	00
Sept.	11.	" balance		1,771	81
				3,179	40

Sept.	11.	By 1 b. c	98...	73	15
	18.	" 1 "	99...	61	45
	"	" 1 "	" ...	70	40
	19.	" 1 "	" ...	64	15
	"	" 1 "	" ...	80	85
	"	" 1 "	" ...	78	50
	"	" 2 "	" ...	124	75
	"	" 1 "	" ...	71	60
Oct.	4.	" 1 "	100...	63	75
	"	" 1 "	" ...	91	80
	"	" 1 "	" ...	63	30
	"	" 1 "	" ...	65	20
	"	" 1 "	" ...	70	90
	7.	" 1 "	" ...	87	10
	9.	" 1 "	101...	67	60
	10.	" 2 "	" ...	141	80
Nov.	6.	" sund. D.	449...	206	91
	15.	" Lorentz & Co	460...	104	78
	"	" 3 b. c	112...	171	70
	"	" 10 "	" ...	482	20
	"	" 1 "	" ...	47	70
	22.	" 6 b. c	115...	318	10
	"	" 1 b. c	" ...	53	
	24.	" 2 "	" ...	112	50
	"	" 4 "	" ...	234	70
	"	" 2 "	" ...	142	70
	28.	" 1 "	117...	42	90
	"	" 1 "	" ...	65	50
		Am't forward		3,254	99

1873.				
		Am't bro't forward	3,254	99
Dec.	1.	By 1 b. c	119...	57	50
"	"	" 3 "	" ...	157	90
"	"	" 2 "	" ...	134	30
"	"	" 1 "	119...	49	50
"	"	" 1 "	" ...	62	
"	"	" 1 "	" ...	48	40
	5.	Bal. to folio	86...	1,388	95
				5,153	54

I certify this to be correct.

ALFRED B. SMITH,
Master in Chancery.

274 James M. Minor. Page 86.

1873.					
Dec.	5.	To bal.	folio	68...	1,388	95
	6.	" bag-, &c		121...	116	85
	9.	" bills pay. Jan. 11		9...	200	00
	18.	" " " 20		" ...	30	
	"	" " " 20		" ...	350	
	"	" " " 20		" ...	80	
	"	" " " 20		" ...	348	
	19.	" " " 20		10...	52	68
	"	" " " 21		" ...	70	18
	"	" " " 21		" ...	44	
	"	" " " 20		" ...	100	
	"	" " " 20		" ...	50	
	29.	" " Feb'y 16		" ...	100	
	31.	" sund. D		3...	240	29
1874.						
Jan.	3.	" bills pay. Feb'y 1, '74		11...	80	
	6.	" " " 2, '74		" ...	93	

1873.					
Dec.	5.	By 1 b. c		121...	62	20
"	15.	" 1 "		124...	68	10
"	27.	" 2 "		126...	94	80
"	29.	" 1 "		127...	54	50
"	30.	" 1 "		128...	57	40
1874.						
Jan.	12.	" 20 "		131...	1,234	20
"	24.	" 1 "		135...	48	
Feb'y	7.	" bal. down			2,663	55

1873.													
Jan.	6.	To	bills pay Jan. 29			11...	45						
	15.	"	cash p'd Carter & Son.			29...	180						
	20.	"	B. P. Feb'y 3, '74			12...	300						
	22.	"	sides, &c			134...	53	82					
	23.	"	oats			" ...	14	35					
	30.	"	B. P. M'ch 4, '74			12...	315						
Feb'y	7.	"	interest			137...	30	63					
							4,282	75					4,282	75
Feb'y	7.	To	bal. down				2,663	55	Feb'y	19.	By	J. M. Minor, G. ac. D.	21...	29	03
	"	"	B. P. Nov. 4, '74			13...	165			20.	"	1 b. c	139...	48	
	"	"	May 6, '74			" ...	110			25.	"	2 "	140...	106	60
	10.	"	sides			137...	119	33	Mar.	2.	"	1 "	143...	52	50
	14.	"	B. P. Nov. 4, '74			14...	150			"	"	1 "	" ...	46	60
	21.	"	" Mar. 23, '74			" ...	250			"	"	1 "	" ...	39	
	"	"	" Ap'l 21, '74			" ...	250			"	"	1 "	" ...	47	90
	24.	"	sides, &c			140...	142	22		"	"	13 "	" ...	687	60
M'ch	4.	"	cash exp. on pck			38...		75		3.	"	cash p'd expense	38...	300	00
	5.	"	sides, &c			144...	182	55		11.	"	4 b. c	145...	213	60
	6.	"	charges ac. D			25...	39			"	"	1 "	" ...	43	60
	7.	"	B. P. Ap'l 6, '74			15...	286			17.	"	cash s. d., Wood-bridge.	40...	490	
	18.	"	" " 18, '74			15...	300			19.	"	4 b. c	146...	256	30
	"	"	" " "			" ...	300			"	"	1 "	" ...	59	
	20.	"	" May 20, '74			16...	200			22.	"	cash s. d., Wood-bridge	41...	200	
			Am't car'd forward				5,158	40				Am't car. forward		2,619	73

275

1874.			Am't bro't forward				5,158	40	1874.			Am't bro't forward	2,619	73
Mar.	23.	To	B. P. May 22, '74			16...	60		Mar.	31.	By	2 b. c	149...	91	70
	25.	"	" " 21, "			" ...	40			"	"	1 "	" ...	45	
	"	"	sides			147...	119	25		"	"	2 "	" ...	72	
	26.	"	B. P. Nov. 29, '74			16...	225			"	"	1 "	" ...	42	20
	31.	"	interest				37	71		"	"	1 "	" ...	46	50
										"	"	1 "	" ...	18	20
										"	"	1 "	" ...	16	50
										"	"	bal. down		2,688	53
							5,640	36						5,640	36
Mar.	31.		Bal. bro't down				2,688	53	Ap'l	1.	By	1 b. c	151...	42	30
Ap'l	7.	"	sundries. D			32...	723	59		14.	"	David Tanner	33...	100	
	"	"	" "			" ...	97	02		17.	"	cash on ac	45...	400	
	"	"	" "			" ...	114	88		22.	"	" s. d. Newman	46...	113	50
	17.	"	B. P. July 18, '74			17...	220			"	"	" " Salter	" ...	72	70
	18.	"	sides, &c			152...	199	72	May	9.	"	1 b. c	154...	39	38
May	2.	"	"			154...	133	55	"	"	"	1 "	" ...	60	33
	5.	"	furniture			" ...	31	35		15.	"	cash by express	50...	160	00
	"	"	iron			" ...	10	86	June	9.	"	cash, P. O. order	54...	200	
	20.	"	corn, &c			156...	325	36				Balance down		3,670	84
June	4.	"	sides, &c			157...	267								
	9.	"	int. to date			" ...	44	19							
							4,859	05						4,859	05
June	9.		Bal. down				3,670	84	Jun.	16.		Bal. to folio 254	3,970	01	
	16.		corn, &c			157...	299	17							
							3,970	01						3,970	01

276

James M. Minor. (Page 254.)

1874.									1874.				
June	16.		Am't forward			86..	3,970	01	July	15.	By	cash p'd exp	58...	200	
July	3.	To	invoice sides			158...	271	45	Aug.	10.	"	2 b. c	160...	90	50
	15.	"	cash, ex. on pkg			58 ..	50			"	"	4 "	" ...	168	40
	16.	"	inv. sides			158...	266	30	Sept.	16.	"	4 "	161...	254	
Aug.	5.	"	sides			160...	195	33		18.	"	1 "	162...	24	45
Sept.	1.	"	bags, &c			161...	138	77		24.	"	1 "	" ...	64	79
	12.	"	B. P. Nov. 14, '74			5...	344	65		"	"	3 "	" ...	197	55
Oct.	27.	"	W. C. Redd. D			60...	8	60		26.	"	1 "	" ...	69	23
	28.	"	bal. of int			169...	165	33		29.	"	6 "	163...	368	35
									Oct.	1.	"	6 "	164...	363	69
										"	"	1 "	" ...	66	68
										20.	"	1 "	167...	36	44
										"	"	1 "	" ...	63	74
										"	"	2 "	" ...	105	25

						5,360	94
Oct.	28.	Bal. bro't down				2,601	87
Nov.	2.	To cotton ac. D.		61...		19	26
	9.	" B. P. Nov. 4-7		6...		100	
	"	" guano B. P. D.		62...		2	68
	12.	" B. P. Nov. 20-23		6...		225	
	13.	" " Dec. 11-14		"...		850	
	14.	" W. A. Hodge. D.		62...		2	75
	18.	" B. P. Dec. 18-21		6...		414	30
	"	" " "		"...		98	96
	30.	" interest		176...		16	86
						4,331	68

277

Nov.	30.	To balance				1,566	62
Dec.	1.	" B. P. Jan. 2				500	
	4.	" W. A. Hodge. D.		66...		34	07
	7.	" cash, reg. letter		79...		1,000	
	9.	" " d'ft Smith & Bro.		80...		70	
	18.	" B. P. Feb'y 14-17		7...		550	
	29.	" interest		182...		3	76
						3,724	45
Dec.	29.	To balance				1,538	27
1875.							
Jan'y	8.	" cash, s. d. Warthen		85...		88	
	13.	" interest		184...		3	90
						1,630	17

1874.							
Oct.	20.	By 2 b. c		167...		121	24
	"	" 1 "		" ...		62	25
	"	" 1 "		" ...		55	07
	21.	" 1 "		" ...		68	23
	"	" 2 "		" ...		105	24
	23.	" 3 "		168...		162	93
	26.	" 1 "		" ...		63	07
	27.	" 1 "		169...		47	97
	28.	bal. down				2,601	87
						5,360	94
Oct.	29.	By 2 b. c		170...		116	92
	"	" 3 "		" ...		174	58
	"	" 2 "		" ...		129	80
Nov.	6.	" 5 "		172...		317	63
	9.	" commission ac. D.		61...		60	
	12.	" 8 b. c		173...		484	01
	"	" 6 "		" ...		321	36
	20.	" W. A. Hodge. D.		64...		513	26
	27.	" 6 b. c		175...		339	15
	"	" 5 "		" ...		308	35
	30.	" balance				1,566	62
						4,331	68

Dec.	2.	By 1 b. c		177...		67	85
	"	" 2 "		" ...		116	93
	3.	" 1 "		" ...		61	09
	"	" 1 "		" ...		51	09
	4.	" 1 "		" ...		49	19
	"	" 4 "		" ...		211	36
	8.	" 1 "		178...		66	77
	"	" 2 "		" ...		85	72
	9.	" 2 "		" ...		109	23
	10.	" 2 "		179...		105	08
	"	" 2 "		" ...		102	87
	12.	" 2 "		" ...		133	26
	"	" 3 "		" ...		175	27
	19.	" 1 "		180...		37	65
	21.	" 12 "		" ...		605	36
	29.	" 1 "		181...		50	43
	"	" 1 "		" ...		48	16
	"	" 2 "		" ...		108	87
	"	" balance				1,538	27
						3,724	45
1875.							
Jan'y	5.	By 3 b. c		183...		150	16
	6.	" W. C. Riddle, 3 b. c		69...		164	74
	13.	" balance to		255...		1,315	27
						1,630	17

278 James M. Minor. (Page 255.)

1875.							
Jan.	13.	To bal.	folio	254...		1,315	27
	21.	" B. P. Feb'y 20		8...		108	11
	"	" " Mar. 2		9...		210	
Feb'y	3.	" Whitlock		187...		3,195	
	8.	" B. P. Ap'l 9		9...		225	
	12.	" W. A. Hodges. D.		73...		10	81
	19.	" cotton ac., 1 b. c		74...		60	56
M'ch	23.	" Whilock		190...		960	
	"	" charges same		" ...		62	40
	"	" interest		" ...		15	
						6,162	15
M'ch	23.	To balance				3,995	42
	24.	" ch'g's fr't on guano		78...		14	40
Ap'l	7.	" " " " "		80...		7	44

1875.							
Jan.	18.	By 1 b. c		185...		58	50
	"	" 2 "		" ...		99	57
	"	" 3 "		" ...		161	12
	21	" 3 "		186...		153	83
Feb'y	5.	" 1 "		187...		50	21
	10.	" 1 "		188...		31	47
	16.	" 4 "		" ...		234	93
	"	" Whitlock. D.		74...		998	40
	18.	" cash sent W. B. W.		95...		100	00
	19.	" 1 b. c		188...		49	21
M'ch	15.	" 1 "		189...		48	34
	23.	" 1 "		190...		59	83
	"	" 1 "		" ...		69	28
	"	" 1 "		" ...		52	04
		Balance down				3,995	42
						6,162	15
Ap'l	8.	By cash s. d. G. S. & Co		105..		150	
May	10.	" " 1 b. c		193...		72	39
	22.	" balance				4,961	31

1875.							
Ap'l	8.	To int. to date		19...	5	10	
	"	" " " " Oct. 15, '75		" ...	54	50	
	"	" bills pay. May 9, '75...		13...	56	13	
	20.	" " " Dec. 1-4.....		" ...	1,038	09	
May	12.	" ch'g's f't on guano....		83...	10	80	
	22.	" interest on ch'g's		193...	1	82	
					5,183	70	
							5,183 70
May	22.	To balance		4,961	31	Aug. 19. By balance to	517... 5,562 41
June	8.	" corn, &c		195...	136	84	
	"	" " (J. K. Pate)		" ...	57	16	
July	13.	" sides, &c		197...	201	48	
Aug.	9.	" "		198...	163	08	
	10.	" flour (Riddle)		" ...	10	75	
	"	" " "		" ...	26	65	
	19.	" interest to date.....		" ...	10	91	
	"	" " " Oct. 15-18, '75.....		" ...	14	23	
					5,562	41	
							5,562 41

I certify this to be correct.

ALFRED B. SMITH,
M. in C., &c.

279 James M. Minor. Page 517.

1875.						1875.			
Aug.	19.	To bal. from	255...	5,562	41	Sept.	13.	By 3 b. c	199... 167 45
	"	" B. P. Sep. 16-19.....	16...	50	83		17.	" 2 "	" ... 93 33
Sept.	16.	" sides, Webster.....	199...	16	25		"	" 1 "	" ... 50 05
	"	" " J. N. Smith.....	" ...	17	60		"	" 1 "	" ... 57 44
	20.	" cash s. d. Pringle.....	127...	180	16		24.	" 1 "	200... 59 40
Oct.	5.	" B. P. Dec. 1-4.....	17...	500	00		"	" 1 "	" ... 69 50
	11.	" cash to Thomas.....	135...	25	89		"	" 1 "	" ... 62
	17.	" Saffold Baurich.....	91...	530			"	" 1 "	" ... 53 70
	22.	" cotton ac.....	92...	51	40		"	" 2 "	" ... 130 20
							27.	" 2 "	201... 120 10
							29.	" 3 "	" ... 141 30
						Oct.	6.	" 2 "	203... 92 80
							9.	" 1 "	204... 47 80
							18.	" 1 "	207 .. 60 50
							"	" 1 "	" ... 53 10
							"	" 1 "	" ... 51 50
							"	" 1 "	" ... 44 60
							"	" 1 "	" ... 56
							"	" 1 "	" ... 61 90
							"	" 1 "	" ... 51 40
							"	" 2 "	" ... 132 40
							"	" 4 "	" ... 258 50
							"	" 4 "	" ... 240
							"	" 11 "	" ... 650
							21.	" 1 "	53 10
							"	" 1 "	55 70
							22.	" 1 "	60 60
						Nov.	2.	" bal. of int	9 54
								" balance	3,950 63
				6,934	54				6,934 54

280 Continuation of page 517.

Nov.	2.	To balance		3,950	63	Nov.	13.	By cash (over in remit,)..	148... 78
	16.	" B. P. Jan. 9.....	18...	105			16.	" 1 b. c	218... 50
	18.	" " Dec. 12-15.....	" ...	194	02		17.	" 2 "	" ... 100 70
	3.	" int. to date.....	223...	22	60		18.	" 2 "	219... 103
				4,272	25		23.	" 1 "	220... 37 80
							"	" 1 "	" ... 51 60
							"	" 1 "	" ... 36 70
							26.	" 1 "	221... 61
							"	" 1 "	" ... 56 57
							29.	" 1 "	222... 24 00
						Dec.	3.	" balance	3,750 10
									4,272 25

1875.					1875.		
Dec.	3.	To balance		3,750 10	Dec.	6. By 1 b. c	44 70
	20.	" B. P. Feb'y 18-21	19...	45 85	1876.		
	"	" " Jan. 17-20	" ...	75	Jan.	5. " balance	4,304 85
	23.	" cash d'ft S. T. H	158...	171 79			
	27.	" Bagn & Co	229...	22 60			
	"	" B. P. Feb. 20-23	19...	69 85			
1876.							
Jan'y	3.	" D. S. Burns. D	104...	175			
	5.	" int. to date	230...	39 36			
				4,349 55			4,349 55
Jan.	5.	To balance		4,304 85	Jan.	21. By cash d'ft J. W. L., &c	164... 35 26
Feb'y	2.	" B. P. Mar. 3-6	21...	62	M'ch	11. " bal. to folio	576... 4,791 59
	10.	" bacon	235...	158 90			
	2.	" B. P. Mar. 3	21...	40			
M'ch	8.	" bacon	237...	166 30			
	11.	" int. to date	" ...	94 80			
				4,826 85			4,826 85

281 James M. Minor. Page 576.

1876.					1876.		
M'ch	10.	To bal. from	517...	4,791 59	Ap'l	17. By 1 b. c	239... 37 89
	29.	" sides	239...	156 02		" " 1 "	" ... 28 00
Ap'l	17.	" fr't on guano. D	118...	140 40		" " 1 "	" ... 32 50
	"	" int. to date	239...	61 82		" " 1 "	" ... 38 10
						" " 1 "	" ... 31 50
						" " 1 "	" ... 36 60
						" " 1 "	" ... 37 20
						" " 2 "	" ... 106 25
						" " 3 "	" ... 113 40
						" " 4 "	" ... 197 20
						" " 7 "	" ... 364
						" " balance	" ... 4,127 28
				5,149 83			5,149 83
Ap'l	17.	To balance		4,127 28	Ap'l	25. By 1 b. c	240... 54
	"	" B. P. May 8-11	23...	39 50	May	12. " 1 "	" ... 29 10
	"	" cash p'd prem. policy	176...	26 14		" " 1 "	" ... 39 70
	25.	" invoice ham	240...	145 86		" " 2 "	" ... 88 60
May	9.	" cash, exp. deed	178...	25		" " 2 "	" ... 64 20
	"	" B. P. Oct. 29	24...	75		" " 2 "	" ... 63 50
	12.	" cash, record'g deed	179...	75		17. " 1 "	241... 24 35
	9.	" sides, &c	244...	217		" " 1 "	" ... 23 40
	17.	" int. to date	" ...	43 20		" " 1 "	" ... 21 50
						" " 1 "	" ... 17 85
						" " 1 "	" ... 18 40
						" " 1 "	" ... 27 05
						" " 1 "	" ... 31
						" " 1 "	" ... 22 83
						" " 1 "	" ... 29 10
						" " 1 "	" ... 34 50
						" " 2 "	" ... 37 60
						" " 2 "	" ... 49 70
						" " 2 "	" ... 32 40
						" " 4 "	" ... 112 10
						" " 5 "	" ... 131 00
						"	3,723 10
				4,674 98			4,674 98

282

May	17.	To balance		3,723 10	May	20. By balance	4,181 22
	19.	" tobacco, &c	242...	214			
	20.	" int. to date	" ...	3 78			
	"	" " " Nov. 1 | 4	" ...	110 32			
	"	" " " Dec. 1 | 4	" ...	130 02			
				4,181 22			4,181 22
May	20.	To balance		4,181 22	July	6. By balance	4,734
June	3.	" Jos. Martin. D	126...	145 90			
	10.	" sides, &c	243...	220 85			
July	1.	" "	" ...	160 82			
	6.	" int. to date	" ...	3 78			
	"	" " " Nov. 1	" ...	21 43			
				4,734			4,734

1876.						1876.					
July	6.	To balance			4,734	Aug.	3.	By balance to		129...	4,989 84
	11.	" corn		244...	51 62						
	18.	" sides, &c		" ...	160 15						
Aug.	3.	" tobacco		" ...	44 07						
					4,989 84						4,989 84

I certify this to be correct.

ALFRED B. SMITH,
M. in C., &c.

283 James M. Minor. Page 129.

1876.						1876.					
Aug.	3.	To balance from		576...	4,989 84	Sept.	30.	By 2 b. c		248...	93 90
	18.	" bag-, &c		245...	51 20		"	" 3 "		" ...	129 40
Oct.	13.	" cash, W. W		191...	66 70	Oct.	5.	" 1 "		249...	38 30
	14.	" " "		" ...	288 80		"	" 6 "		" ...	208 50
	24.	" " prem. policies		192...	25 89		7.	" 3 "		" ...	144 90
	4.	" Seymour, T., &c		194...	150		13.	" 1 "		" ...	55 60
	8.	" " Walker, &c		" ...	5		19.	" 1 "		250...	36 13
	4.	" Minor & N		135...	410 30		"	" 6 "		" ...	247 60
	25.	" int		1...	22 48		23.	" 1 "		251...	33 80
							26.	" 1 "		252...	41
							"	" 1 "		" ...	42 90
							"	" 1 "		" ...	38 90
							"	" 2 "		" ...	76 60
							"	" 5 "		" ...	220 10
						Nov.	4.	" 1 "		253...	40 60
							"	" 1 "		" ...	41 60
							"	" 2 "		" ...	88 30
							"	" 2 "		" ...	76 50
							25.	" balance			4,357 58
					6,010 21						6,010 21

1876.						1876.					
Nov.	25.	To balance			4,357 58	Dec.	4.	By 1 b. c		2...	37 50
Dec.	8.	" cash		198...	559 30		6.	" 5 "		3...	226 30
	13.	" H. K. Newsome. D		138...	189 74		12.	" 1 "		4...	43 30
1877.							"	" 1 "		" ...	41 90
Jan.	24.	" ch'g's		10...	19 20		14.	" 1 "		" ...	29 67
	25.	" "		" ..	38 40		"	" 1 "		" ...	39 50
	26.	" "		" ...	38 40		16.	" 2 "		5...	91 80
	31.	" "		11...	48		"	" 3 "		" ...	116
Feb'y	1.	" guano. D		14...	115 40		21.	" 1 "		6...	37 30
	6.	" int. to date		13...	104 40		"	" 1 "		" ...	40 90
							"	" 1 "		" ...	40 28
							"	" 3 "		" ...	130 20
						'77.					
						Jan.	2.	" 1 "		7 ..	47 50
							"	" 1 "		" ...	41 77
							"	" 2 "		" ...	115 40
						Feb'y	1.	" guano, B. K. D		141...	208
							6.	" 5 b. c		12...	261 30
							"	" 1 "		13...	39 50
							"	" balance			3,882 30
					5,470 42						5,470 42

284

1877.											
Feb'y	6.	To balance			3,882 30	Feb'y	14.	By guano B. R		142...	140 40
	10.	" ch'g's		13...	9 60		24.	" cash		212...	60
	17.	" "		14...	57 60	M'ch	3.	" "		213...	100
	15.	" "		" ...	3 12	Ap'l	9.	" balance to		759...	3,815 71
M'ch	6.	" "		17...	48						
	7.	" "		" ...	4 80						
	10.	" cash, telegram		214...	1 24						
	14.	" charges		18...	28 80						
	31.	" cash, reg. deed		216...	60						
Ap'l	1.	" ch'g's, guano		22...	2 40						
	9.	" interest		23...	77 65						
					4,116 11						4,116 11

(Page 759.)

1877.						1877.			
Ap'l	9.	To balance from	129...	3,815 71		May	5.	By H. K. Newsome. D...	147... 198 80
	14.	" charges	145...	21 60				" balance	4,325 92
	21.	" cash prem. policy	219...	26 04					
	5.	" com. ac. D	147...	51 25					
	"	" int. to Nov. 1	25...	118 62					
	"	" " " Jan. 1	" ...	158 15					
	"	" " " date	" ...	33 35					
				4,524 72					4,524 72
May	5.	To balance		4,325 92		May	31.	By cash	223... 469 25
June	4.	" com., &c		160		July	2.	" balance, ledger	20... 4,016 67
				4,485 92					4,485 92

I certify this to be correct.

ALFRED B. SMITH,
M. in C., &c.

285 James M. Minor. Page 20, Ledger C.

1877.						1877.			
July	2.	To bal. Ledger B		4,016 67		Sept.	18.	By 2 b. c	29... 104
Sept.	4.	" guano note. D	156...	4,798 80			21.	" 2 "	30... 101 20
	12.	" bagn	29...	101 78		Oct.	3.	" interest. D	159... 5 19
	"	" ch'g's ac. D	156...	1 50		"	3.	" balance	8,908 36
	14.	" B. P	35...	100					
	17.	" cash		100					
				9,118 75					9,118 75
Oct.	3.	To balance		8,908 36		Oct.	15.	By 5 b. c	35... 204 20
	22.	" cash prem		25 89			18.	" 4 "	37... 194
Dec.	1.	" int		56 30			26.	" B. P. Nov. 1. D	164... 220
						Nov.	6.	" 4 b. c	43... 200 40
							8.	" 2 "	44... 57 83
							15.	" 5 "	47... 213 60
							16.	" 1 "	" ... 49
							17.	" 8 "	" ... 390
							20.	" 2 "	48... 94 40
							21.	" 1 "	49... 45 40
							22.	" 1 "	" ... 43 50
						Dec.	1.	" balance	7,268 22
				8,990 55					8,990 55
Dec.	1.	To balance		7,268 22		Dec.	4.	By 10 b. c	51... 453 20
	29.	" 1 mule from A. J. M	173...	150			10.	" 3 "	53... 118 50
'78.							15.	" 1 "	" ... 50 40
Jan.	1.	" int	57...	70 27			18.	" 1 "	64... 38 50
							20.	" 3 "	" ... 124 90
							26.	" 1 "	55... 36 70
							29.	" 7 "	" ... 248 30
							31.	" 1 "	56... 39 20
							"	" balance	6,378 79
				7,488 49					7,488 49
Jan.	1.	To balance		6,378 79			18.	By cash	23... 600 00
	29.	" int	61...	57 34			29.	" balance	5,836 13
				6,436 13					6,436 13
Ja'y	29.	To balance		5,836 13		1878.			
						M'ch	4.	By cash	29... 1,000 00
							28.	" profit & loss	183... 4,836 13
				5,836 13					5,836 13

I certify this to be correct.

ALFRED B. SMITH,
M. in C., &c.

286 J. R. Thigpen. Page 20, Ledger C.

1878.					1879.		
M'ch	28.	To note due Jan. 1, '79	183...	2,500 00	Jan. 15.	By balance	5,944 92
"	"	" " " 1, '80	" ...	2,500 00			
Ap'l	18.	" cash premium	38...	25 59			
Oct.	21.	" " "	51...	25 89			
1879.							
Jan.	4.	" " protest	3...	3			
	15.	" int. to date	109...	442 80			
"	"	" Nov. 1, '79	" ...	447 64			
				5,944 92			5,944 92
Jan.	15.	To balance		5,944 92	Ap'l	14. By cash ac. rent	78... 300
Ap'l	15.	" cash	79...	50		29. " 4 b. c	117... 167 45
	24.	" "	80...	25 89	May	6. " 1 "	118... 40 80
Oct.	8.	" com. ac. D	219...	15	Sept.	26. " 1 "	121... 38 05
	"	" profit & loss	" ...	1,000 00		" " 2 "	" ... 84
	10.	" int	123...	39		30. " 3 "	122... 101 60
					Oct.	7. " 6 "	123... 248
						8. " J. M. Minor, 1 b. c	219... 40 98
						10. " balance	5,965 82
				6,986 70			6,986 70
Oct.	10.	To balance		5,965 82	Oct.	20. By bal. to	327... 5,991 82
	20.	" cash prem		26 00			
				5,991 82			5,991 82

J. R. Thigpen. Page 327, Ledger C.

1879.							
Oct.	20.	To bal. from	20...	5,991 82	Feb'y	7. By J. M. M. & Co. D	234... 50
Dec.	22.	" cash	101...	50	Oct.	25. " 2 b. c	150... 84 40
1880.					"	29. " 1 "	" ... 38 10
Nov.	19.	" J. L. Hardee. D	236...	500	"	30. " 4 "	151... 161 90
	23.	" int	" ...	7 54	Nov.	10. " 1 "	154... 34 20
						" " 2 "	" ... 77 60
						23. " balance	6,103 16
				6,549 36			6,549 36
Nov.	23.	To balance		6,103 16	1881.		
1881.					M'ch	23. By 2 b. c	179... 47 10
Jan.	3.	" int	166...	91	"	" balance	6,058 85
M'ch	23.	" "	179...	1 88			
				6,105 95			6,105 95
M'ch	23.	To balance		6,058 85			

I certify this to be correct.

ALFRED B. SMITH,
M. in C., &c.

287 The foregoing master's report endorsed as follows:

#184. In the 5th circuit court of the United States for the southern district of Georgia (eastern division). Benj. J. Wilson, complainant, and James M. Minor *et al.*, defendants. In equity. Report of the master and the testimony taken before him. Filed November 19th, 1881. W. M. Heyward, deputy clerk.

288 *Testimony Taken Before W. G. Robson, Special Com'r.*

STATE OF GEORGIA,
Washington County.

By virtue of an order of James W. Locke, judge of the United States circuit court for eastern division of the southern district of Georgia, appointing W. G. Robson and A. A. Mayo, of Washington county, Ga., or either of them to examine witnesses in the case of B. J. Wilson *vs.* J. M. Minor *et al.*, in equity, now pending in said court, approved in open court December 7th, 1883, I have cause the witness named in said order to come before me, who, being sworn according to law, answers as follows:

A. H. TRAWICK, sworn, says:

Q. Where do — reside, and do you know the parties to this suit?

A. I reside in Washington county, Ga. I am acquainted with James M. Minor & B. J. Wilson.

Q. Are you or not the same person who testified before A. B. Smith, master, in the city of Savannah, in the case of B. J. Wilson *vs.* James M. Minor and John L. Hardee, in reference to certain contract or articles of agreement made the 5th of January, 1876, between J. Minor and John L. Hardee, purporting to be signed by James M. Minor and witnessed by A. H. Trawick, J. P., and D. M. Salter, said contract being attached to certain testimony taken in said equity case, taken before A. B. Smith, master, and of file in the clerk's office in the circuit court of the U. S., and stated
289 that the signature purporting to be your signature as a witness to said contract in writing as above mentioned was not your genuine signature, but was a forgery?

A. I am the same person, but did not testify that it was a forgery.

Q. If yes, state whether or not you have since giving in said testimony made a more careful examination of your handwriting and signature and thought over the testimony you then gave.

A. I have.

Q. Please state the result of said examination and deliberation on your part.

A. I find that I was mistaken in the letter "r." I cannot find a letter "r" on my docket like this, but find the letter "r" in his signatures to other papers made upon this order that resembles it— not exactly like it. I find that I was also mistaken about the letter "H." I find no letter "H" on my docket like this, but find some similar or made on that order elsewhere.

Q. Do you or not now believe that you made a mistake in the evidence you then gave? Have you or not since discovered signatures made by you similar in character and formation of letters to the signatures to said writing?

A. I may be mistaken about the facts in part; I have found out that I was mistaken. I have found some signatures similar
290 to it, but — exactly like it.

Q. Do you or not believe your signature to said writing to be a forgery, or do you now believe it to be your genuine signature?

A. I could not say positively whether it was genuine or not. I cannot say whether it is a forgery or not.

Q. Do you remember signing this paper?

A. I do not remember signing it.

Q. With all the lights before you, do you or not believe that is your signature to the agreement?

A. I have doubts about it; could not say positively.

Q. Are the signatures to the documents presented to the commissioner your genuine signatures?

A. I suppose they are.

Q. Do you or not sign your name in different ways, or does not your signatures vary?

A. I always thought that I signed my name the same way, but on examination I find a little variation.

Q. Can you now remember all the papers witnessed by you in the year 1876?

A. I don't remember any particular paper.

Q. Do you or not remember ever witnessing a paper for
291 James M. Minor?

A. I have thought over this thing a great deal. I have some faint recollection, but cannot locate any time or place that I ever witnessed a paper for him.

Cross:

Q. How old are you, Mr. Trawick?

A. I am fifty years old.

Q. How long have you been a justice of the peace in this county?

A. Every year except one; since I was 21 years old.

Q. Have you not got a good recollection?

A. Tolerable good.

Q. Has Mr. James M. Minor ever called your attention to the time and place where you witnessed this paper?

A. I don't know that he ever has.

Q. Did you ever hear Mr. Minor say who were present and at what place you witnessed this paper?

A. I never have.

Q. Have you ever been told where this paper was said to have been witnessed by you?

A. I have been told so.

292 Q. Where?

A. In Mr. Newman's store.

Q. Do you remember who told you so?

A. Mr. B. J. Wilson told me that was the evidence given in by Mr. Minor in this case.

Q. Did you know Mr. D. M. Salter?

A. I did not.

Q. If you had witnessed this paper in Mr. Newman's store in 1876 and D. M. Salter had also witnessed it then and there, and

after all these thought- you have given the subject, would you not have recollected the transaction?

A. I think I would. It might have been a busy day; may have been in a hurry.

Q. What is or has been your custom in witnessing papers? Do you or the other witness sign first?

A. My custom or practice has been for the other witness to sign first.

Q. Have you ever departed from that custom?

A. I don't know of a single case where I have.

Q. In reply to the question whether your signature to this agreement was your genuine signature or not you said you could not say whether it was genuine or not. Now, if it was your genuine signature, would you have any doubt about it?

293 A. If it was in the handwriting in which I generally wrote I would have none.

Q. In answer to the question whether your signature to that agreement was a forgery or not you said that you had doubts about it. Why have you doubts about it?

A. Because I have no recollection of ever witnessing the paper, and the signature to that paper does not exactly correspond with other signatures of mine.

Q. You stated, then, you always thought that you wrote the same way, but upon examination of other signatures that your handwriting varied a little. Have you found any other genuine signature of yours that looked as little like your general signature as the one to this agreement?

A. The same variations to his signature, but none *not* exactly like the one to the agreement.

Q. Examine the signature to the agreement and your genuine signature to the papers put in evidence and point out the difference between your signature to that agreement and your genuine signature.

A. There is a little difference in the letter "H" and the letter "r" in the word "Trawick;" balance of the signature to paper No. 1 is very similar to the one on the contract.

294 Q. Have you ever seen a genuine signature of yours before that you could no- recognize at once?

A. I don't know that I ever did.

Q. Is it not your best belief that is not your genuine signature to the agreement?

A. It has a resemblance of my handwriting, but I can't say whether it is genuine or not. I do not know what to believe.

Q. Don't you believe that you did not witness that paper?

A. To the best of my knowledge, I don't think I did. I have no recollection of it. If I did I have forgetten all about it.

A. In your direct evidence you said you were mistaken in part about the facts you testified to before Mr. Smith, the master. You meant you were mistaken when you swore on that occasion that you did not make an "r" like the "r" in Trawick and the initial "H" in his signature to the agreement?

A. That is what I meant.

Q. Has not Mr. Minor or friends of his been to see you since you testified in this case before the master?

A. Mr. Minor never has.

Q. Has not friends of his been to see you to try and convince —?

295 A. Some persons has been to see me and talked to me about it.

Q. Has not a big pressure been brought to bear upon you to get you to change your testimony?

A. Nothing has been brought to my knowledge, only my attention has been called to my signature in other places, which I did not think was wrong.

Redirect:

Q. Did you tell Mr. Minor not to talk to you about the paper?

A. I told Mr. Minor not to talk to me about it.

Q. You speak about your doubt as to the genuineness of this signature. Is not your failing to recollect the witnessing the paper the reason of your doubt?

A. That is the big-est part of my doubt.

Q. Do you remember witnessing all the papers put in evidence?

A. I remember them and the circumstances; most of them are warrants.

Q. Can you say positively that you never in witnessing papers signed first?

A. I cannot say positively I never did; but is always accustomed to sign last.

296 Q. Does all your signatures to the warrants put in evidence exactly correspond?

A. Not exactly.

Q. Do they correspond with your signatures on the docket?

A. Not exactly.

Q. You do not pretend to say that your sig-ature to the agreement is not genuine?

The counsel for the complainant objects to this question on the ground that it is leading.

A. I cannot say positive w-ether it is genuine or not.

Q. Did you or not, in the city of Savannah, in a conversation with Mr. Newman and Wm. Holmes, in May, 1883, say that you were now satisfied that your signature to the agreement was genuine, and that you were mistaken in your former testimony?

The complainant's counsel objects to this question on the ground that the witness is the witness of the defendants, and they cannot impeach their own witness.

A. I have no recollection of ever saying to M-. Newman anything about it. I told Mr. Holmes, in Savannah, that I had made a mistake in relation to the letter "r" and "H" in the signature, but not as to the genuineness of the signature.

297 Q. Did you not say to W. R. Thigpen, in Sandersville, in April last and about two weeks ago, that you were satisfied that you had made a mistake in your testimony before the master and you now thought your signature was genuine?

Counsel for complainants object to this question on the ground that the defendants cannot impeach their own witness.

A. I had a conversation with W. R. Thigpen about two weeks ago. I stated to him that I was mistaken in my evidence in Savannah in reference to the letter "r" in Trawick and the letter "H." That is as far as I recollect in saying to Thigpen.

Q. Do you recollect ever having any conversation in Sandersville during the spring with W. R. Thigpen and B. D. Evans together in which you stated you might have signed the paper or agreement?

A. I recollect the conversation and having said at the time and to the persons named above—I said it seems like I recollect signing a paper for Mr. Minor some time, but did not seem as far back as that one was. I so stated in my evidence in Savannah. B. D. Evans replied that it was down in the evidence. Witness replied that it ought to be, for I so stated it. Witness replied farther: If I had witnessed a paper of Mr. Minor that probably this was a copy. Col.
298 Evans said we have no copy.

Q. Is not the J. P. in your handwriting?

A. The whole signature resembles my handwriting except the letter "r" in Trawick and the initial letter "H," and these resemble some of my signatures.

Recross:

Q. Did you ever till Newman, Holmes, Thigpen, or Col. Evans that you were satisfied that your signature to this agreement was genuine?

A. I have no recollections. I don't think I did.

Q. Why did you tell Mr. Minor not to talk to you about this matter?

A. I was a witness in the case and I thought it best.

A. H. TRAWICK.

Answered, sworn to, and subscribed before me the 17th day of December, 1883.

W. G. ROBSON,
Special Commissioner.

Miss EMMA SALTER, sworn, says:

Q. Where do you live, and do you know the parties?

A. I am acquainted with Mr. J. M. Minor. I have seen B. J. Wilson. I am not acquainted with Mr. J. L. Hardee.

299 Q. Do you know D. M. Salter; how long? Is he living; if not, when and where did he die?

A. I knew D. M. Salter. I knew him all his life. He is dead. He died in Washington county, Ga., last June four years ago.

Q. Are you familiar with his handwriting and signature? Would

you not know or recognize his signature? If yes, give your reasons for knowing it.

A. I am familiar with his handwriting and signature. I would recognize it. I would know it from having seen him write and from having seen his writing after it was written.

Here the contract of James M. Minor with John L. Hardee was presented to the witness, attached to the interrogations of J. M. Minor.

Q. Examine the signature of D. M. Salter to said contract and state whether or not what purports to be his signature to said writing is his genuine signatures or not.

A. That is his signature.

Q. What relation are you to D. M. Salter?

A. I am his sister.

Cross:

300 Q. Do you know when the signature of D. M. Salter to the agreement was placed there?

A. I do not.

Q. What did your brother do in 1876?

A. He worked upon a farm at home that year.

Q. What did he do in the year 1877?

A. He worked upon the farm; might have sold books a part of the time. He was a book agent. He worked upon a farm all his life except the year in which he died.

Q. What did he do in 1879, the year he died?

A. He stayed in a store at Sun Hill the year he died.

Q. Do you know who- store it was?

A. It was Mr. James M. Minor's.

Q. He was a clerk for Mr. Minor?

A. I suppose he was.

Q. How old was he when he died?

A. He was nearly 23 years old.

Q. When did he go to school last?

A. He went to school from the time he was eight (8) years old up to within a year or two before his death.

301 Q. Did he go to any business school?

A. I don't think he did, but went to the common schools from one (1) to six (6) months in the year.

Q. Did he ever take writing lessons?

A. I don't know whether he did or not.

Q. Did he attend any school outside of the county?

A. I don't — that he did.

Q. When did you first become acquainted with his handwriting?

A. When he was between eight (8) and nine (9) years old.

Q. Have you any of — signatures written in 1876?

A. I do not know that I have.

Q. Was there any change in his handwriting?

A. Yes; there was some little change in it.

Q. His handwriting improved in the last years of his life?

A. Yes, sir; it improved some, more especially when he took

pains. The improvement not so marked in his signature as otherwise.

EMMA SALTER.

302 Answered, sworn to, and subscribed before me this December 18th, 1883.

W. G. ROBSON,
Special Commissioner.

Mr. A. H. Trawick has appeared before the commissioner with a desire to correct some of his testimony delivered on the 17th day of December, 1883, and makes the following correction: I did tell Newman in the city of Savannah that I found that I was mistaken in the letter "r" in Trawick and the initial letter "H." I have never been satisfied in mind about the correctness of my testimony in Savannah. I was requested not to talk to Mr. Minor about this case by B. J. Wilson, nor to let Mr. Minor talk to me, and I so informed his friends.

A. H. TRAWICK.

Answered, sworn to, and subscribed before me this December 18th, 1883.

——, ——.

WILLIAM HOLMES, sworn, says:

Q. Where do you reside, and do you know the parties?

A. I reside in Washington county, Ga. I am acquainted with James M. Minor & B. J. Wilson, but do not know J. L. Hardee.

303 Q. Do you or — know A. H. Trawick? If yes, where and how long have you known him?

A. I know A. H. Trawick, of Washington county. I have known him in said county all my life. I was born and raised in (2½) two and one-half miles of him.

Q. Are you or not familiar with — handwriting and signature of A. H. Trawick and would you or not know or recognize his signature? If yes, give your reasons for knowing his signature.

A. I am familiar with his handwriting and would know his signature anywhere that I might see it, because I went to school to him. He set the first copy for me. I learned to read his handwriting before I learned to write my own. I acted as bailiff under him as justice of the peace for fifteen (15) or sixteen (16) years; from having seen his writing signatures for years.

Q. Have you or not ever seen or examined a writing between James M. Minor and John L. Hardee purporting to be signed by A. H. Trawick, J. P., as a witness? If yes, state whether said signature of said Trawick is his genuine signature.

Here the contract or agreement was again presented to the witness.

304 A. I have examined the signatures of the paper, and the signature of A. H. Trawick is his genuine signature.

Q. What position did you occupy in the year 1876? If you say that you where with said A. H. Trawick in any capacity state

whether or not you had any conversation with said Trawick about his witnessing any paper for James M. Minor; if yes, what Trawick said to you, to best of your recollection.

A. I was bailiff under him in 1876. I had a conversation with Trawick at the court ground about that time, and Trawick said to me that he had witnessed some papers for J. M. Minor. I had another conversation with Trawick in the city of Savannah in May, 1883; Trawick told me then that he was satisfied that was his signature, alluding to the agreement between Harden and Minor.

Q. Did or not Trawick (A. H.) in the conversation referred to above say anything about a mistake in his testimony?

A. I don't think he did to me at that time.

Q. Does it or not come within your knowledge that A. H. Trawick has been much troubled in mind in reference to the
305 testimony he gave in Savannah before A. B. Smith, master? If yes, what has he said to you about it?

Complainant's counsel objects to this question on the ground that it's irrelevant and hearsay.

A. Yes; he has been troubled a great deal about —. He said he never was troubled about anything as much in his life before and he was afraid it would be the cause of him loosing his mind.

Cross:

Q. Will you swear that you know that the signature of A. H. Trawick to said agreement is his genuine signature?

A. I do so swear. He could not make a better one.

Q. Can you be mistaken about this?

A. I cannot be mistaken.

Q. Suppose that some one had forged his signature and in imitation of his genuine signature, in so doing, had made a perfect signature, can you tell the forged from the genuine signature?

A. I can tell A. H. Trawick's signature from a forged one.

Q. Could his signature be forged so perfectly that you
306 could not tell it from his genuine signature?

A. It could not be forged so that I could not tell it.

Q. Is it impossible for you to be mistaken about his signature?

A. Yes; I can tell his signature wherever I see it.

Q. You say that some time about 1876 at the court ground Mr. Trawick told you that he witnessed some papers for Mr. Minor?

A. Yes; he did.

Q. How do you know that it was 1876?

A. I am not positive that it was in 1876, but it was about that time.

Q. Might not this conversation have occur-ed in 1877 or 1878 or 1879?

A. I think it was earlier than 1877, '78, or '79.

Q. How came him to tell you about witnessing these papers for Minor?

A. I do not know.

Q. Tell all that he said about it.

A. He said that he had witnessed a paper for Minor; that he did such work as that free—without charge.

307 Q. You say that in May last Mr. Trawick told you in Savannah that he was satisfied that his signature to the agreement was genuine?

A. Yes; he told me so.

Q. Are you certain that was his language he used?

A. Yes.

Q. Did he not tell you this: that he was mistaken about certain letters in his name?

A. No; he did not have reference to any letters in his name.

Q. Are you on friendly terms with Mr. Trawick?

A. Yes; I have nothing against him.

Q. Do you know his general character for truth and veracity in the community in which he lives?

A. Yes. His character is good. He is considered a truthful, upright, good man.

Q. From that character would you believe him on his oath?

A. I would; only at the present time his mind is so torn up; not from the character of the man, but from the state of his mind at present.

Q. Would you believe him at the time he swore in Savannah before A. B. Smith, the master?

A. I would not have believed him then. He was very much torn up in mind when — returned from Savannah.

308 Q. Did or not Trawick ever at any time tell you that his signature to the agreement was not genuine? Has he not always said it was genuine, and that he was mistaken in his first testimony in Savannah before A. B. Smith?

A. Trawick has never denied his signature to the agreement being his genuine signature. He said his testimony before A. B. Smith, the master, was not true because it was taken down as he gives it in. Trawick said that he was afraid of B. J. Wilson—afraid that he would take the advantage of him; that he was satisfied that was his genuine signature.

The complainant's counsel objects to this question on the ground that it is hearsay.

Recross:

Q. You say that Mr. Trawick always admitted that the signature to the agreement was genuine. How many times has he admitted it?

A. He admitted once in Savannah and never has denied it.

WM. HOLMES.

Answered, sworn to, and subscribed before me December 18th, 1883.

W. G. ROBSON,
Special Commissioner.

Maj. M. NEWMAN, sworn, says:

Q. Do you know the parties to this suit, and where do you reside?

A. I live in Sandersville, Ga., and I know all the parties to this suit.

309 Q. Do you or not know A. H. Trawick, of the county of Washington; if "yes," when & where & how long have you known him?

A. I know Mr. Trawick, of this county; have known him since 1848 or '49.

Q. Are you or not familiar with his handwriting & signature? If yes, state when & where & how you became so familiar. Do you or not know & can you not recognize his signature?

A. I am familiar with his handwriting. When I was merchandising I held his notes, and since I have been "ordinary" of Washington county I have seen his signature frequently to official documents. I can recognize his signatures.

Q. Have you or not ever seen or examined a certain contract or articles of agreement purporting to be made January 5th, 1876, between J. M. Minor and J. L. Hardee, purporting to be signed by said Minor and to be witnessed by said A. H. Trawick, J. P., and D. M. Salter? Said contract is attached to the testimony of J. M. Minor and A. M. Minor and of file in the clerk's office of the circuit court of the U. S. If you say you have examined said writing and the signatures thereto, and from your knowledge of his signatures would *you* know or recognize the signature of said A. H. Trawick, state w-ether or not from your knowledge of said signature — is the genuine signature of A. H. Trawick.

A. I have examined the paper in Savannah and in Sandersville also, and from my knowledge of A. H. Trawick's handwriting I believe the signature of A. H. Trawick to be his genuine signature.

310 Q. Are you or not familiar with the handwriting of James M. Minor? Is he or not an expert in handwriting? Is or is not the said writing purporting to be the signature of A. H. Trawick, J. P., the handwriting of James M. Minor?

A. I am not familiar with handwriting of James M. Minor. I have seen it, and from what I have seen I do not consider him an expert. The signature of A. H. Trawick, J. P., is not the handwriting of the said J. M. Minor.

Q. Did you or not have any conversation with A. H. Trawick in the city of Savannah in May, 1883? If yes, state your recollection what Trawick said to you in reference to his testimony taken before A. B. Smith, master.

A. Mr. Trawick said that he had no distinct recollections of signing the paper, but he might be mistaken and may have signed it.

Q. Have you or not examined papers where the justice of the peace signed first as a witness?

A. I have seen papers signed that way, but they are very rare.

Cross:

Q. Did Mr. Trawick tell Mr. Holmes in Savannah in May, 1883, in your presence that he was satisfied that his signature to the paper was genuine?

A. I have no recollections of it.

311 Q. If Mr. Trawick had made that statement in your presence would you not have remembered it?

A. I would if he had of said it in those words.

Q. If Trawick's signatures to said instrument was forged and perfect imitation of his genuine signature, could you tell the forged signature from the genuine signature?

A. I could not.

Q. You are the ordinary of Washington county?

A. I am.

Q. Do you know the general character of A. H. Trawick for truth & veracity?

A. I do.

Q. Is it good or bad?

A. It is good.

Q. From that character would you believe him on his oath?

A. I would.

Q. You said a short time ago that from what you knew of Mr. Minor's handwriting you did not consider him an expert.

A. From what I know of his handwriting and from what I have seen I do not consider him an expert.

312 Redirect:

Q. Have you or not observed the conditions of A. H. Trawick's mind since he testified before A. B. Smith, the master, and since? If yes, what is his mental condition?

A. His mind appeared disturbed in Savannah when I was there with him. He also appeared greatly disturbed yesterday and today, December 17th & 18th, 1883.

Q. From that condition of his mimd may or may not his recollections be effected?

A. I do not know what effect his mental condition might have on his memory.

Q. Would you believe him as readily now as before?

A. I would believe anything he says.

M. NEWMAN.

Answered, sworn to, and subscribed before me this the 18th of December, 1883.

W. G. ROBSON,
Special Commissioner.

WILLIAM R. THIGPEN, sworn, says:

Q. Where do you reside, and do you know the parties to this suit?

A. I reside in Sandersville, Ga., and I know the parties to this suit.

Q. Do you or not know A. H. Trawick, of Washington
313 county, Ga?

A. I am acquainted with A. H. Trawick, of said county.

Q. Did you or not have any conversation with said A. H. Trawick about his signature as a witness to a certain agreement purporting to be made by James M. Minor to John L. Hardee, which is of file in the testimony of this case? And, if yes, state when & where and what Trawick said to you in reference to his signature to said paper in Sandersville.

The complainant's counsel objects to this question on the ground that it is hearsay, and that no foundation has been laid for the introduction of it as impeaching testimony.

A. The first conversation I had with him was at his home, in this county. In February, 1883, he said the signature purporting to be his to the contract between Minor & Hardee looked like his except the "H" and "r." After that I saw some papers signed by him in a different way, and I called his attention to it. I think it was in the month of April, 1883. This conversation took place in Sandersville. Trawick said when he testified in Savannah in this case that he was testifying correctly, as he thought; but upon an examination of other papers containing his signature since then he was satisfied that he was mistaken. My recollection is that Trawick told
me at that time that he was satisfied that he had signed that
314 contract, and about two weeks ago he informed me that he should, if ever called on to testify in said case in regard to said signature—he would acknowledge the mistake of his first testimony in this case; that he had so informed B. J. Wilson on the train in company with him on his way to Savannah.

Q. Did you or not ever receive an offer from W. V. Tanner in 1880 for his, Tanner's, place? What did he offer the place for per acre?

A. M. V. Tanner offered me his place, near Sun Hill, 12½ C. R. R., at $12.00 per acre. His place joins the land in dispute and corners in 200 or 250 yards of a dwelling-house on the place in dispute. I refused to give that price.

Q. How far is W. V. Tanner's place from the Central r'road?

A. I believe it runs in 50 or 100 yards of said railroad?

Q. What difference is there in value between Tanner's place and the land in dispute?

A. There is very little difference in the value of the two places in dispute.

Q. What is the value of the place conveyed by James M. Minor to John L. Hardee?

A. I think it is worth ten dollars per acre; a full price.

Q. Did or did not James M. Minor continue to live at 12½
315 C. railroad since 1876?

—. He rented a plantation from me known as the Jenkins plantation, upon which he resided during the years 1877 & 1878. Since that time he has lived upon the Riddle lands, about 14 miles from 12½ Central railroad.

Q. For whom has Minor held & managed said place since said conveyance?

A. For John L. Hardee, except one year—1878. Joe Thigpen managed it that year.

Q. Who pays the taxes on said place?

A. James M. Minor pays the taxes for John L. Hardee, as agent, in 1877 & '79, '80, & '81. Joe Thigpen paid the taxes in 1878. Green B. Thigpen gave the land in the years 1882 & 1883 for the benefit of John L. Hardee. This does not appear on the tax digest in that way for the years 1882 & 1883. I have been tax collector of Washington county every year since 1879, from which source I derive my knowledge or information.

Q. Did you or not ever live at Sun Hill, on the land in dispute?

A. Yes; I lived there in 1880 & 1881.

Q. Did B. J. Wilson know that you lived there?

A. Yes; he knew it. He told me in the year 1880 that he disliked to disturb me, as I had just married and moved there, but that Mr. Rogers, superintendent of the C. R. R., had instructed him to build a warehouse upon the site where my dwelling-house stood.

316 Q. What house did you occupy as a dwelling?

A. I occupied the house formerly occupied by James M. Minor.

Q. Where was James M. Minor living at the time you occupied this dwelling?

A. He was living on the Riddle lands, 4 or 5 miles distant.

Q. Was or was not B. J. Wilson frequently at Sun Hill, 12½ C. R. R., during the year 1880?

A. B. J. Wilson spent a good deal of his time there during that year. He was there frequently.

Cross:

Q. In the conversation with Trawick in Savannah in 1883 he said that from an examination of other papers that he was satisfied that he was mistaken. Did he say how he was mistaken?

A. I don't think he said how he was mistaken.

Q. Did not he tell you that he was mistaken when he first swore that he did not make "H" and "r" like those in his signature?

A. I don't remember that he did at that time.

Q. Are you certain that he told you in the same conversation that he signed the agreement in dispute as a witness?

317 A. I am sure he impressed me that way, if he did not use those words; so much so that I called up Minor and told him there was no use of taking other witnesses to Savannah, as Trawick had acknowledged his signature. I think this way in the prescence of Trawick, and he never contradicted it.

Q. Does not the place in dispute embrace all the lands in the village of Sun Hill and around the depot at 12½ C. R. road, on the left of the railroad right of way as you go to Savannah?

A. Yes; it does.

Q. Are there not valuable building lots on it in Sun Hill?

A. I don't know but one or two valuable lots. There are a good many level lots there, but don't know anything to make them valuable.

Q. Are there not a good many lots upon which you can build storehouses?

A. Yes.

Q. How many horse farms on the place in dispute?

A. I think there is enough cultivatable land for three horse farms.

Q. What do farms rent for down there?

A. They use- to go from 10.00 to 15.00 lbs. middling lint cotton to the horse.

318 Q. What years did you occupy the dwelling on this place?

A. During the years 1880 & 1881.

Q. From whom did you rent?

A. From Jas. M. Minor, as the agent of John L. Hardee.

Q. How much rent did you pay?

A. One hundred dollars for the storehouse & dwelling.

Q. How long did you occupy the storehouse?

A. I did not occupy the storehouse but one year and nine months.

Q. What is the dwelling occupied by C. D. Thigpen worth for rent per year?

A. I think it is worth six or eight dollars per month.

Q. How long has C. D. Thigpen occupied that house?

A. I think he built it in 1881, and has lived there ever since.

Q. The dwelling occupied by C. D. Thigpen is not the one occupied by yourself?

A. No, sir.

Q. What relation is C. D. Thigpen and Joe Thigpen to the defendant J. M. Minor?

A. They are brothers.

319 Q. What relation are you to the defendant J. M. Minor?

A. I am his brother.

Q. What relation is G. B. Thigpen to the defendant?

A. He is his father.

Redirect:

Q. Are there or not building lots on W. V. Tanney's land near the depot & also on Wilson's land?

A. Yes, sir; there are building lots on W. V. Tanner's land & B. J. Wilson's lands; B. J. Wilson's lands the most valuable; Tanner's less valuable than the land in dispute.

Sworn to and subscribed to before me this December 18th, 1883.

W. R. THIGPEN.

W. G. ROBSON,
Special Commissioner.

320 No. 1.

STATE OF GEORGIA,
Washington County.

Personally came Will. Hooks, who on oath saith that, to the best of his knowledge and belief, Peter Taylor (colored) did, on the 17th day of September, 1880, in county and State aforesaid, commit the offense of assault and battery, and this deponent makes this affidavit that a warrant issue for his arrest.

his
WILL. x HOOKS.
mark.

Sworn to and subscribed before me September the 17th, 1880.
A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

To any sheriff, D. sheriff, or any lawful officer of said State, Greeting:

Will. Hooks makes oath before me that on the 17th day of Sept., 1880, in county aforesaid, Peter Taylor did commit the offense of assault and battery. You are therefore commanded to arrest the body of the said Peter Taylor and bring him before me or some other judicial officer of the State, to be dealt with as the law directs. Herein fail not.

Given under my hand and official signature this Sept. the 17th, 1880.

A. H. TRAWICK, *J. P.*

This paper was identified by A. H. Trawick as having thereto affixed his genuine signature.
December 17th, 1883.

W. G. ROBSON,
Special Commissioner.

Warrant. State *vs.* Peter Taylor. Assault and battery.

321 No. 2.

STATE OF GEORGIA,
Washington County.

Personally appeared before me 'Becca Pool (colored), who on oath says that West Edwards is in possession of her *wareing* clothes and bed clothing and refuses to give them up without any cause, and this deponent makes this affidavit a warrant for the arrest of the said West Edwards and his clothing.

her
REBECCA x POOL.
mark.

Sworn to and subscribed before me this Jan. the 22, 1880.
A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

To any lawful officer to execute and return:

Whereas Rebecca Pool, of said county, makes oath before me that West Edwards, of said county and State, is in possession of her clothing and bed clothing without any warrant or any other legal process and refuses to deliver or give them up to her, these are therefore to command you to enter into the house of said West Edwards and seize said clothing as shall be appointed out to you by the said Rebecca Pool and deliver them to her.

Given under my hand an- official signature this January 22, 1880.

A. H. TARWICK, *J. P.*

This paper was identified by A. H. Tarwick as having affixed thereto his genuine signature Dec. 17th, 1883.

W. G. ROBSON,
Special Commissioner.

Warrant No. 1. 'Becca Pool *vs.* West Edwards. For clothing; cost writing warrant, 1.25.

322 No. 3.

STATE OF GEORGIA,
Washington County.

Personally came William Roberts, who on oath saith that Moses Gordon did on the 30th day of Oct., 1878, in the county aforesaid, commit the offence of an assault, and this deponent makes this affidavit that a warrant may issue for his arrest.

his
WILLIAM x ROBERTS.
mark.

Sworn to and subscribe- before me Oct. 30, 1878.

A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

To any sheriff, dep. sheriff, or constable — said State, Greeting:

William Roberts makes oath before me that on the 30 day of Oct., 1878, in county and State aforesaid, Moses Jordan did commit the offence of an assault. You are therefore commanded to arrest the body of the said Moses Jordan and bring him before me or some other judicial officer of this State, to be dealt with as the law directs. You will levy on a sufficiency of the property of said Moses Jordan to pay the cost in event of his final conviction. Herein fail not. Given under my hand and official signature this October the 30, 1878.

A. H. TRAWICK, *J. P.*

320 No. 1.

STATE OF GEORGIA,
Washington County.

Personally came Will. Hooks, who on oath saith that, to the best of his knowledge and belief, Peter Taylor (colored) did, on the 17th day of September, 1880, in county and State aforesaid, commit the offense of assault and battery, and this deponent makes this affidavit that a warrant issue for his arrest.

his
WILL. x HOOKS.
mark.

Sworn to and subscribed before me September the 17th, 1880.
A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

To any sheriff, D. sheriff, or any lawful officer of said State, Greeting:

Will. Hooks makes oath before me that on the 17th day of Sept., 1880, in county aforesaid, Peter Taylor did commit the offense of assault and battery. You are therefore commanded to arrest the body of the said Peter Taylor and bring him before me or some other judicial officer of the State, to be dealt with as the law directs. Herein fail not.

Given under my hand and official signature this Sept. the 17th, 1880.

A. H. TRAWICK, *J. P.*

This paper was identified by A. H. Trawick as having thereto affixed his genuine signature.
December 17th, 1883.

W. G. ROBSON,
Special Commissioner.

Warrant. State *vs.* Peter Taylor. Assault and battery.

321 No. 2.

STATE OF GEORGIA,
Washington County.

Personally appeared before me 'Becca Pool (colored), who on oath says that West Edwards is in possession of her wareing clothes and bed clothing and refuses to give them up without any cause, and this deponent makes this affidavit a warrant for the arrest of the said West Edwards and his clothing.

her
REBECCA x POOL.
mark.

Sworn to and subscribed before me this Jan. the 22, 1880.
A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

To any lawful officer to execute and return:

Whereas Rebecca Pool, of said county, makes oath before me that West Edwards, of said county and State, is in possession of her clothing and bed clothing without any warrant or any other legal process and refuses to deliver or give them up to her, these are therefore to command you to enter into the house of said West Edwards and seize said clothing as shall be appointed out to you by the said Rebecca Pool and deliver them to her.

Given under my hand an- official signature this January 22, 1880.

A. H. TARWICK, *J. P.*

This paper was identified by A. H. Tarwick as having affixed thereto his genuine signature Dec. 17th, 1883.

W. G. ROBSON,
Special Commissioner.

Warrant No. 1. 'Becca Pool *vs.* West Edwards. For clothing; cost writing warrant, 1.25.

322 No. 3.

STATE OF GEORGIA,
Washington County.

Personally came William Roberts, who on oath saith that Moses Gordon did on the 30th day of Oct., 1878, in the county aforesaid, commit the offence of an assault, and this deponent makes this affidavit that a warrant may issue for his arrest.

his
WILLIAM x ROBERTS.
mark.

Sworn to and subscribe- before me Oct. 30, 1878.

A. H. TRAWICK, *J. P.*

STATE OF GEORGIA,
Washington County.

To any sheriff, dep. sheriff, or constable — said State, Greeting:

William Roberts makes oath before me that on the 30 day of Oct., 1878, in county and State aforesaid, Moses Jordan did commit the offence of an assault. You are therefore commanded to arrest the body of the said Moses Jordan and bring him before me or some other judicial officer of this State, to be dealt with as the law directs. You will levy on a sufficiency of the property of said Moses Jordan to pay the cost in event of his final conviction. Herein fail not. Given under my hand and official signature this October the 30, 1878.

A. H. TRAWICK, *J. P.*

This paper was identified before me by A. H. Trawick as having his genuine signature affixed thereto on December 17, 188–, at Sandersville, Ga.

W. G. ROBSEN,
Special Commissioner.

323 No. 4.

STATE OF GEORGIA,
Washington County.

Justice Court, 100 Dist., G. M.

M. I. SWINT
vs.
RUFUS TAYLOR.

To all and singular the constable- of said county, Greeting:

You are hereby commissioned of the goods, chattels, and all other property of Rufus Taylor you levy by distress and — thereof sufficient to make eighteen dollars principal and two dollars & fifty-five cents interest; also two dollars & five cents costs, which was adjudged against him at the justice court, held in said district on the 20th day of January, 1877, in favor of Moses J. Swint, and have you said sums of —, together with this writ, with the further sum of thirty-five cents for issuing this writ, on or before the third — in the next month, to render to said plaintiff his principal sum of money and interest and all cost.

Given under my hand and official signature this Jan. 25, 1877.

A. H. TRAWICK, *J. P.*

This paper was identified before me, Sandersville, Ga., by A. H. Trawick, as having affixed thereto his genuine signature on the 17th day of December, 1883.

W. G. ROBINSON,
Special Commissioner.

324 No. 5.

GEORGIA,
Washington —.

Before me, the undersigned, justice of the peace in said county, personally came Robert Hood, and — oath says that Irwin Johnson and his wife, N. A. Johnson, — indebted to him the sum of seventy-five dollars, and that they are trying to dispose of this property for which said — is subject.

ROB'T HOOD.

Sworn to and subscribed before me this April the 23, 1878.

A. H. TRAWICK, *J. P.*

GEORGIA,
Washington County.

We, Robbert Hood, principle, and —— ——, sec., acknowledge ourselves bound unto Irwin Johnson and his wife, N. A. Johnson,

in the sum of one hundred and fifty dollars, subject to the following conditions: That Robert Hood, principal, in seeking an attachment against the said Irwin and N. A. Johnson, which is now about to be sued out, returnable to the May term of the justice court. Now, if the said Rob't Hood shall pay all cost and damage that the — Irwin and N. A. Johnson — in consequence of sueing out such attachment, in the event said R. Hood shall fail to recover in said case, then this bond to be null and void.

ROB'T HOOD.

Executed in pursuance of this April 23, 1878.

A. H. TRAWICK, *J. P.*

GEORGIA, }
Washington County, }

To all and singular the sheriff- and constable- of said State:

You are hereby commanded to attach and seize so much of the property of Irwin *Irwin* Johnson and his wife, N. A. Johnson, as will make the sum of seventy-five dollars and all costs, and also serve such summons and garnishment as may — place- — your hands, and that you make return of this attachment, with your acting and doing entered thereon, to the May term, third Saturday, justice court, in the 100 district, to which court this attachment is made returnable, and notify said Irwin and his wife, N. A. Johnson, to be at court on that day; herein fail not.

325

#5 cont'd.

Given under my hand and official signature this April the 23, 1878.

A. H. TRAWICK, *J. P.*

#5.

This paper was identified before me, at Sandersville, Ga., by A. H. Trawick, as having affixed thereto his genuine signature, on the 18th day of December, 1883.

W. G. ROBSON,
Special Commissioner.

Attachment. Rob't Hood *vs.* Irwin and his wife, N. A. Johnson.

#6.

STATE OF GEORGIA:

Personally came Corah Brantly, Washington county, who on oath saith to the best of her knowledge and belief Ben. Brantly and Mary Pool did, on the 6 and 8 day- of November, 1879, in the county aforesaid, committed the offense of an assault, and this deponent makes this affidavit that a warrant may issue for their arrest.

her
CORAH x BRANTLY.
mark.

Sworn to and subscribed before me this Nov. the 8th, 1879.

A. H. TRAWICK, *J. P.*

GEORGIA,
Washington County,

To any sheriff, dep. sheriff, or any lawful officer of said State:

Corah Brantly makes oath before me that on the 6 and 8 day of Nov., in the year 1879, in the county aforesaid, Ben. Brantly and Mary Pool did commit the offense of an assault. You are therefore commanded to arrest the body of the said Ben. Brantly and Mary Pool and bring them before me or some other judicial — of this State, to be dealt with as the law directs; herein fail not.

Given under my hand and official signature this November the 8th, 1879.

A. H. TARWICK,
J. P., 100 *Dist., I. M.*

State *vs.* Ben. Brantly & Mary Pool, colored. For assault.

326 STATE OF GEORGIA,
Washington County.

Case in Justice Court, 100th District, G. M.

A. W. JACKSON
vs.
LAMB HOOKS.

To any law officer to execute and return.

Lamb Hooks:

You are hereby required personally or by att'y to be and appear at the justice court held in said county and district on the third Saturday in July next, at the court-house, *at* A. H. Trawick, by ten o'clock a. m., and there to answer the complaint of A. W. Jackson in an action of debt on and account, as in default the court will proceed as to justice shall appertain. Said term of court is trial term.

Witness my hand and official signature June the 16th, 1869.

A. H. TRAWICK, *J. P.*

[Endorsed:] A. W. Jackson *vs.* Lamb Hooks. "Copy."

327 STATE OF GEORGIA,
Washington County.

I, W. G. Robson, do hereby certify that the above and foregoing forty-four (44) pages of written matter contains the answers under oath to the questions propounded by counsel to A. H. Trawick, M. Newman, Emma Salter, William Holmes, and W. R. Thigpen at Sandersville, Ga., in the case of B. J. Wilson *vs.* James M. Minor *et al.*, now pending in the circuit court of the U. S., E. D. and southern district of Ga., by virtue of an order granted by Judge James W. Locke in open court on the 7th day of December, 1883.

In testimony whereof I have hereto set my seal this the 19th day of December, 1883.

W. G. ROBSON, [L. S.]
Special Commissioner.

Endorsement: Cir. court of U. S., E. D. & so. dist'ct of Ga., Nov. term, 1883. B. J. Wilson *vs.* J. M. Minor *et al.* In equity. Testimony of A. H. Trawick, Wm. Holmes, M. Newman, Emma Salter, & W. R. Thigpen, taken before W. G. Robson, special commissioner.

328 *Additional Testimony of J. L. Hardee, Dec.* 21, '81.

In Equity. In the 5th Circuit Court, Southern District of Ga., Eastern Division.

BENJ. J. WILSON, Compl't,
and
JAMES M. MINOR *et al.*, Defendants.

To the Honorable John Erskine, judge, &c.:

By virtue of the authority vested in me as master in chancery in the above case, at the request of defendants' solicitor and after the filing of my report of the testimony taken in said case, I have caused John L. Hardee, who has already been examined as a witness in the case, to again come before me, and he, after being duly sworn, declares and says in addition to what has already been sworn to *says:* My agreement with Mr. Minor was this: that on the first day of January, 1882, in case he should desire to repurchase the place deeded to me that I would calculate interest upon the $5,000, five thousand dollars, agreed on as amount due me and as shown by my lease to 1st Jan'y, 1882, then deduct from said amount the rent, $1,400, with interest paid me during the three years inclusive of said lease, and the balance would be the amount due; which said testimony was taken and sworn before — in the presence of the solicitor of complainants and defendants, at Savannah, Ga., the 21st day of December, 1881, and which is respectfully submitted by me to you herein as a part of the testimony in said case.

ALFRED B. SMITH,
Master in Chancery in the Case.

Endorsement: E. # 184. Box 46. U. S. cir. court, E. div., so. district Georgia. B. J. Wilson, compl't, and James M. Minor *et al.*, defendants. Additional testimony of John L. Hardee. Filed Dec. 21, 1881. W. P. Ward, clerk.

329 *Additional Testimony of John L. Hardee, Taken Oct.* 27, '84.

In the 5th Circuit Court of the U. S. *States,* Southern District of Georgia, Eastern Division.

BENJAMIN J. WILSON, Compl't,
and
JAMES M. MINOR, JOHN L. HARDEE, *et al.*, Def'ts. } In Equity.

The above case having been refer-ed to me as master in chancery to examine and state the amount "now due" from the said James M. Minor to the said John L. Hardee and the amount due — Minor

to Hardee on the 6th day of February, 1877, allowing interest on said amount and charging rents actually received, and in order to do so I have caused the said John L. Hardee to come before me, and he, after being duly sworn, say- that on the 6th day of Feb'y, 1877, James M. Minor *and* the firm of N. Hardee & Son & Co. the sum of $3,882.30 on open account and $4,798.80 in notes not charged up according to our usual rate until the end of the season, the amount being afterwards reduced by sundry payments to about $5,000 during the season of 1877–'78; that Minor was due me on the 6th of Feb'y, 1877, $5,836.13 on book account and on notes not then due I have received as follows *follows:*

Nov. 1, 1878	$500 00
'79	500 00
'80	493 30
'81	400 00
'82	500 00
'83	500 00
Oct. 10, '84	500 00
	$3,393 30

330 Thigpen paid same and also the rate of interest agreed upon between Minor and myself *and* to be the rate charged by the banks. I charged him 10 per cent. until the charge of the sum (Oct. 14, 1879). After this I charged him 8 per cent.; this was one verbal contract. Th*eir* was nothing in writing as to the rate of interest to be charged. According to my books J. M. Minor is now indebted to the sum of $4,573.38 after giving him credit with interest on all his payments; which said testimony was taken before me at Savannah, Ga., on the 27th day of October, 1884, and to the contents of which I certify.

ALFRED B. SMITH,
Master in Chancery.

Oct. 29, '84.

Endorsement: # 184. 2. Wilson *vs.* Minor *et al.* Equity. Additional testimony of John L. Hardee, taken before the master in chancery Oct. 27, 1884. Filed in office Nov. 1, 1884. H. Herb, dep. clerk.

Additional Testimony of John L. Hardee, Taken Dec. 20th, 1884.

B. J. WILSON, Compl't,
and
J. M. MINOR and JOHN L. HARDEE, Defendants.

Testimony taken before the master in chancery at Savannah, Ga., on December 20th, 1884.

JOHN L. HARDEE, after being sworn, says: My business is that of a commission merchant and has been for a long time. I have had business relations with James M. Minor for a number of years. A

statement of Minor's amount with me shows that on the 6th day of February, 1877, according to the books, he was indebted to me
$3,882.30, but he owed me $118.32 besides, which did not
331 appear on the books at that time, and the total amount
which Minor was indebted to me on the 6th day of Febr'y, 1877, was $4,000.62. On the 28th of March, 1878, my account with Minor was passed to profit & loss account, and at that time he was due me $4,836.13. The item of interest on the amount from Feb'y 7, 1877, to March 28, 1878, is for interest due me by J. M. Minor at the time the amount was made out and presented from time to time, including the interest on the balance due at the time the amount was carried to profit and loss account.

The cash charges on the amount are for disbursements made for J. M. Minor and for his benefit and by his directions. After Feb'y 7, 1877, Minor carried on a business with me. The money which he paid me was in draft; sometimes he paid in money, but the most of it was in cotton shipped by him to me and sold and placed to his credit for guano sold by him as my agent.

(Mr. West here offered as testimony a consolidated statement made up *of* the witness, J. L. Hardee, of his account with J. M. Minor, showing a Dr. & Cr. account since Feb'y 7, 1877, to which Mr. Lester objects.) The objections was sustained, the statement not being filed and is not hereto attached, being withdrawn.

The witness refers to the testimony taken *of* the master and filed Nov. 19, 1881, and says the credit to J. M. Minor was from shipments of cotton and drafts and money paid during the time the charges exist, from Feb'y 7, 1877, to March 28, 1878.

Minor did not instruct me to apply the payments made since Feb'y
7, 1877, to the amount which *unites* prior to that date. This
332 is the amount stated as a balance of $4,000 & $\frac{62}{100}$ which was
due on Feb'y 6th, 1877. I did not apply any of the credit in payment stated in my general amount with Minor, which was closed on March 28th, 1878, to the indebtedness which existed on the 6th of Feb'y, 1877. I made no specific application of the credit to the amount due Feb'y 6 or 7, 1877, except in the general course of business the amounts so credited were credited to J. M. Minor'· account in a general way, including the amount due on Feb'y 6th, 1877. On taking a balance, if it was found that there was a balance in the amount over the correct indebtedness it was credited to the old amount. See No. 1 & No. 2 of amount filed in the testimony on Nov. 19, 1881. After March 28, 1878, I received money, drafts, and cotton from Mr. Minor, which I put to his credit. The witness refers to account B, filed with the master, which shows the credit. I have made debits against Minor since March 28th, 1878. The witness, refer-ing to the debits in the copy account B, says the charges for interest refer to the balance on March 28, 1878, and as subsequent accounts were rendered the charges not for interest were paid out on J. M. Minor's amount, for his benefit, and on his order. The last credit for rent was received on 10th October, 1884. The credit from Nov. 1st, 1878, and ending Oct. 10th, 1884, was for rent except the excess

over $500. The rent of the place was $500 per annum and was for the property mentioned in the deed of Feb'y 6, 1877. The agreement was that the rent of the place was to be $500 a year, payable on the 1st of October of each year unless he, Minor, pur-
333 chased the place. If he did purchase, the money paid for rent was to be applied to the purchase-money. I changed bank rates of interest. There was no written contract between Minor and myself as to the rate of interest. He agreed verbally to pay the rate the banks charged. Thigpen's and Minor's amounts are the same.

Cross-examined by Mr. LESTER, for the comp't:

The answers, testimony, and amounts heretofore made out and on file contain a correct statement of the amount on March 28, 1878. I agreed to sell to Thigpen for $6,000. Negotiations in reference to this sale was made by Minor and Thigpen. J. R. Thigpen paid $1,000 on March 28, 1878, and gave his two notes for $2,500 each. This $1,000 went to the credit of J. M. Minor, as appears on the exhibit. I got the $1,000 on the general amount of Minor on the 28th of March, 1878. I bargained the place to Thigpen, he and Minor both being present and arranging the matter. At the time Minor owed me about $6,000. I agreed to sell to Thigpen for $6,000, $4,000.62 being the old amount and $2,000 being the subsequent balance due at the time to me by Minor. I took Thigpen's two notes for $2,500 each, and he paid me $1,000 each, which amount of each I credited on the amounts of J. M. Minor; it was put on the new amount and on the general amount as it stood. This is all I received from Thigpen. I received nothing from Minor except the rent and some small amounts. I have received nothing from J. M. Minor since the date of the decree in this case but the $500 paid for rent on the 10th of October, 1884. The understanding in
334 agreement which I made with Minor in reference to the homestead is in writing. All my transactions with Minor is shown on the books. The amounts of Minor and Thigpen are the same.

Re-examined by Mr. WEST, for defend't-:

My reasons for keeping the account with Thigpen was that he had purchased the property, and after the date (March 28th, 1878) the account was in his name, so as not to complicate it. It was kept open after the surrender of the note. Since this time Minor has paid the rent. I value the property at from $5,000 to $6,000. I think it was worth that at the date of the deed, on Feb'y 6th or 7th, 1877. The charges in the account of Thigpen are all for amount due by Minor to me.

I certify that the foregoing is a true and correct statement of the testimony taken by me on 20 December, 1884, in the case of B. J. Wilson, comp't, and James M. Minor and John L. Hardee, defendants, which was referred to me by the judge of the 5th circuit court

of the United States for the southern district of Ga. April 13th, 1883.

ALFRED B. SMITH,
Master in Chancery.

Endorsement: No. 184. Box 46. In 5th circuit court United States, southern district Georgia. B. J. Wilson, complainant, and James M. Minor and John L. Hardee, defendants. Testimony taken December 20th, 1884. Filed in office April 14, 1885. H. H. King, clerk.

335 UNITED STATES OF AMERICA, }
Eastern Division, Southern District of Georgia. }

I, H. H. King, clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that the above and foregoing writing annexed to this certificate is a true, correct, and complete transcript of the record as directed by law to be made and true, correct, and complete copies of the proofs and of such entries and papers on file as may be necessary on the hearing of the appeal in the case of B. J. Wilson, complainant, and James M. Minor and John L. Hardee, defendants, lately pending in the said circuit court and appealed by the defendants to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and affixed the seal of the said circuit court, at Savannah, Ga., this 5th day of September, 1888.

[Seal of U. S. Circuit Court, Georgia.]

H. H. KING *Clerk*,
By S. F. B. GILLESPIE,
Deputy Clerk.

Endorsed on cover: Case No. 13,515. S. Georgia C. C. U. S. No. 341. John L. Hardee, appellant, *vs.* Benjamin J. Wilson. Filed March 19, 1889.

146 U S 179

Office Supreme Court U. S.
OCT 5 1892
CHARLES H. TEMPLETON

Supreme Court of the United States,

OCTOBER TERM, 1892.

TERM NO. 34.

Record, Case No. 13,515.

JOHN L. HARDEE,
Appellant,

vs.

BENJAMIN J. WILSON.

Appeal from the Circuit Court of the United States, for the Southern District of Georgia.

BRIEF OF CHARLES N. WEST & WILLIAM D. HARDEN, FOR APPELLANT.

STATEMENT OF FACTS.

John L. Hardee, doing business under the firm name of N. A. Hardee's Son & Co. (Printed Record, p. 81 top), had been the factor, for a number of years, of James M. Minor, formerly James M. Thigpen (pp. 5 top, 96 middle).

January 5th, 1876, James M. Minor, being greatly in debt to Hardee, signed a written contract to ship 300 bales of cotton to Hardee to be sold on commission, and to pay for the advances made to Minor by Hardee, and, if Minor failed to ship a sufficiency of cotton, or to pay said Har-

dee, in full, during the year 1876, Minor was to sell to Hardee his plantation, called, for brevity, No. 12½ C. R. R., containing 400 acres, or a sufficiency thereof, to pay up in full, at the price of ten dollars per acre, and, on or before March 1st, 1877, on the receipt of the sum of ten dollars per acre, was to execute a proper deed of conveyance therefor, with a covenant of general warranty against incumbrances, to the said J. M. Minor, his heirs and assigns. The name "J. M. Minor," in this place, was clearly and indisputably a clerical error, and should have been "John L. Hardee," as shown by the context, Minor to pay all taxes and outgoings in respect to the premises, for the years 1876 and 1877, receiving the rents and profits thereof, and to surrender the same to said Hardee in good repair, on or before Jan'y 1st, 1878 (p. 33).

March 18th, 1876, Minor declared a trust in said land for his wife and children (p. 26).

This deed Minor and his wife declared void as against the debt and subsequent deed to Hardee (p. 32), and this deed was held void by the Circuit Court (p. 36, bottom), May 3d, 1884, and no exception taken to that decision. That decree was confirmed and made final Dec. 12th, 1887 (p. 43), to which final decision on that point no exception is taken.

Feby. 6th, 1877, Minor and his wife conveyed said plantation No. 12½ C. R.R., by an ordinary and usual Deed of Bargain and Sale to said Hardee, as containing 400 acres, for the expressed consideration of $4,000.00, with no condition, limitation or reservation of any sort in the deed (p. 27).

Minor owed, at that time, Feby. 6th, 1877, according to the testimony of both Hardee and Minor, something over $5,800.00 (pp. 6–9–32–67–84–85–87–88). The exact amount was $5,898.30, being the Ledger Balance of $3,-

882.30 (pp. 12–113) plus 60 tons guano at $36.=$2160.00 less cr. by frt. $144.00=$2016.00. 3882.30 × 2016.00= $5,898.30 (p. 9). This guano, being the amount owing on guano notes not yet due (p. 84 middle), together with the guano subsequently sold to Minor, does not appear upon the ledger until fall, when it all appears together (see entry of guano note Sept. 4/77, p. 114 middle): the personal accounts being kept in Ledger B, and the guano notes in Ledger D: (p. 114 middle). The deed expressed but $4,000.00 as the consideration, because of the contract to sell at $10 per acre, but the debt was claimed by Hardee, and admitted by Minor, and shown by the books, to be over $5,800.00 at that time, and the deed was given and accepted in extinguishment of the whole debt (pp. 32 near bottom, 88 bottom, 99 middle, and all through the answers and testimony of Hardee and Minor).

While the deed was thus absolute, and in no sense, so far as the intentions of the parties are concerned, a security for a debt, Hardee, not caring to have his money tied up in lands of that character, and preferring to have the money for other uses, told Minor that if he (Minor), could raise the money necessary to buy the land, he would sell it back to him for what it had cost him, Hardee, and would give him a Bond for title to the land; but for some reason, probably inadvertence, failed to do so (p. 97, just below middle). The understanding between Hardee and Minor thus seems to have been that while the land was absolutely and unconditionally conveyed to Hardee so as to vest the title completely and indefeasibly in him, Hardee, yet, the refusal of the purchase of the land, at any time before Hardee sold it to any one else, was voluntarily given to Minor (pp. 6 top, 100 bottom). Minor managed the place as Hardee's agent, paying taxes, and offering it for sale, as such agent (pp. 5–6 top, 32, 35, 83,

87–88 top, 97–99–100, and many other places in the answers and testimony of Hardee and Minor).

Hardee did not close Minor's account at the time of the execution of the deed of Feby. 6th, 1877, though he cancelled and returned to him his guano notes (pp. 71) and accounts (pp. 6, answer 5th; 67, end of 2d answer–p. 71), but kept it open in hopes of Minor's settling up; but closed the account finally and completely on March 28th, 1878 (pp. 97–99, 114). By the agreement preceding the Deed (p. 34) Minor was to have possession of the land during 1876 and 1877, but was to surrender the same on or before Jany. 1st, 1878, to Hardee, his heirs or assigns. This surrender had really taken place earlier, since Minor had not paid the taxes on it as his own place since 1876, but had paid them ever since as agent for Hardee (p.88), and had tried to sell the land as being Hardee's land (p. 83). After the closing of Minor's account, Minor, as Hardee's agent, sold, by Hardee's consent, the place to Thigpen, Minor's brother, for $6,000.00—$1,000.00 cash down, and two notes each for $2,500.00. Hardee received the cash and notes (pp. 83–84–97), but Thigpen, being unable to pay the notes when they became due, Hardee, by agreement between Thigpen and himself, resumed possession of the place on Jany. 1st, 1879 (pp. 97–98).

April 14th, 1879, Hardee leased the land to J. R. Thigpen and J. M. Minor until January 1st, 1882 (pp. 76-77) with power to purchase for $5,000.00 with interest, from March 28th, 1878; and, the purchase not having been made, on January 20th, 1882, Hardee leased the place to G. B. Thigpen and J. M. Minor for five years with privilege to buy on same terms and at same price as stated in the other lease (pp. 77-79), Hardee being always anxious to sell the land.

Nearly two and a half years after Minor's deed to

Hardee, and sixteen months after the final closing of Minor's account, and the absolute and unconditional surrender by Minor of any right to redeem the land by virtue of any agreement made before, at, or after the making of the deed of February 6th, 1877, that is to say, on August 1st, 1879, B. J. Wilson, the complainant, filed his Bill in the Superior Court of Washington County, Georgia, to the September, 1879, Term of that Court, and it was transferred, on his petition, to the Circuit Court of the United States for the Southern District of Georgia, November 13th, 1880 (p. 30), setting forth the said trust deed, and said deed to Hardee, and charging that said deeds were made to delay, hinder and defraud him, Wilson, in the collection of a certain debt due to him by said Minor, and charging that the deed to Minor was given merely to secure the payment of the debt of said Minor to said Hardee, and that said debt had since been paid, and that said Hardee held said property to keep said land from being subjected to his, Wilson's, claim: Also that Minor was insolvent, and tendered to Hardee whatever may be found to be still due him from Minor, and prayed that the land may be conveyed to him, Wilson, or else sold, and the proceeds applied to pay Hardee's claim, so far as allowed, and then the claim of said Wilson—any residuum to go to Minor.

The testimony introduced in support of the Bill, outside of the testimony and answer of Hardee, and the answer of Minor, is practically only as to the value of the land, the establishing of the fact that Minor was indebted to Wilson on a note, dated February 7th, 1871 (p. 28), and put in Judgment March 7th, 1877, one month after Minor's deed to Hardee, and execution thereon issued May 7th, 1877, with return of *nulla bona* thereon August 1st, 1879 (pp. 28-29).

Upon this Bill, and the answers of Hardee, Minor and

Mrs. Minor, an interlocutory decree was rendered (p. 36) to the effect that the trust deed from Minor to his wife is void and of no effect.

That the indenture of Minor and his wife to Hardee, of February 6th, 1877, is not a conveyance of said lands, but a security for the payment of the debt due and owing to said Hardee from said Minor at that time, to be determined by a Master.

That the Judgment of B. J. Wilson, of May 7th, 1877, be held to be a lien upon said land, so conveyed by Minor to Hardee, upon the payment of the amount due said Hardee.

That the question of amount due from Minor to Hardee be referred to Alfred B. Smith as Master in Chancery, and upon a final determination of said amount the property to be sold, and the proceeds to be applied to paying Hardee, and then Wilson. Decree dated May 3d, 1884 (pp. 36–37).

The Master reported, November 1st, 1884, that the amount due from Minor to Hardee on February 6th, 1877, was $5,836.13, and that on November 1st, 1884, Minor owed Hardee $4,574.55 (pp. 37–38). To this report complainant excepted (p. 39), and the exceptions were sustained, the report set aside, and the matter re-referred to the Master (p. 40).

The Master made a second report April 13th, 1885, that the amount due February 6th, 1877, was $4,000.62, *i. e.*, the personal ledger account, not including the guano note account not then due, and $118.50 not shown on the books, and that there was due on April 13th, 1885, $1,784.76 (pp. 41–42).

This second report was excepted to by the defendant

John L. Hardee (pp. 42, 43), the said defendants James M. Minor and Annie E. Minor his wife, being by their own admissions not interested in any manner in the result of the case except to defend themselves against the charge of fraud (p. 87, near bottom), and the interlocutory decree having relieved them from that charge, they were really out of the case, and a final decree was rendered December 12th, 1887, overruling the defendant's exceptions, and confirming and closing the decree heretofore made, and directing the sale of said plantation in dispute, and that out of the proceeds of such sale should be paid the costs, then to said Hardee $1,785.79, with interest from April 13th, 1885, and, if a balance should be left, then to pay said Wilson, complainant, $2,900 principal, $1,234 interest, and interest upon the principal from May 7th, 1877, and any balance left to be paid to said Hardee for account of said Minor (who was, and was so treated, practically out of the case), and a fee of $150 to the Master.

On the same day an appeal was entered and granted, and Bond on the appeal, approved by the Judge, filed January 17th, 1888 (p. 44).

Assignment of Error.

The following is assigned as Error.

1st. The Court below erred in its final decree in overruling the exceptions of defendant Hardee to the second report of the Master, and in confirming such report.

2nd. The Court below erred in its final decee in confirming and making final the interlocutory decree of May

3rd, 1884, so far as declaring "that the indenture and conveyance of James M. Minor and Annie E. Minor, purporting to convey to John L. Hardee a certain tract of land lying and being in the County of Washington, said State, and bearing date the sixth day of February, A. D. 1877, be held and construed to be not a conveyance of said land, but a security for the payment of the debt due and owing to said Hardee from said James M. Minor at that time to be determined by reference to a Master."

3rd. The Court below erred in its final decree in confirming and making final the said interlocutory decree so far as declaring that the Judgment of B. J. Wilson, the complainant, from Washington County Superior Court, bearing date May 7th, 1877, he held and determined to be a lien upon said lot of land so hitherto conveyed to said Hardee by said Minor, upon the payment to said Hardee of the amount found due him by the Master.

4th. The Court below erred in its final decree in decreeing that said land should be sold, and that out of the proceeds thereof should be first paid to said Hardee $1,785.76, with interest, and then to said Wilson his claim, with interest, and then the balance, if any, to said Hardee for account of said Minor.

If the Court were right in holding the deed in question an equitable mortgage—a mere security for a debt—and not a deed passing the title to Hardee, then the rest of the decree, except as to the amount due to Hardee, would have been right; and it is not intended to impose upon this Court the necessity of investigating the various accounts submitted to the Master, the admitted figures

being sufficient for our purpose. Therefore there is before the Court, on this appeal, the one main question:

What is the character and effect of the deed of Feby. 6th, 1877, and the contemporaneous understanding between Hardee and Minor;

And, in case only that this Court should sustain the Court below in its view that it was not a conveyance of the title, but merely a security for a debt, Is not the second report of the Master clearly erroneous.

The Argument.

I.

The deed, by itself, indicates nothing beyond an ordinary bargain and sale of land (p. 27); nor is there anything in the circumstances preceding, attending, or succeeding, its execution to make it anything else. Minor owed Hardee money, and could not pay, in 1876, and wanted still further advances. He contracted with Hardee (pp. 31-33-99) to ship him three hundred bales of cotton, and if he did not, and did not pay up all he owed, he agreed to sell and convey to said Hardee the plantation No. 12½ C. R. R., on or before March 1st, 1877, or a sufficency thereof to pay up in full such advances: Minor to work the place during 1876 and 1877, paying the expenses, and retaining the profits, and to surrender the land to Hardee on or before January 1st, 1878 (p. 34 top). Additional advances were made by Hardee to Minor during 1876, on the faith of the contract (p. 32 top), and Minor, finding himself unable to pay, made the deed in question.

Hardee and Minor and Mrs. Minor, swear positively, in their answers, (pp. 5–6–7–31–32–33), and in their testimony (pp. 67–69–87–99)—and no one contradicts, or can contradict, them—that the deed was intended to be in payment of the debt, and not a security for it. The land was worth, as was supposed at that time, about $6,000.00 (p. 83–87), but no one had been found able and willing to pay that price for it, as is shown by the fact that it is still unsold, though offered frequently at that price (p.83).

The debt was, at that time, $5898.30 (p. 9), and immediately after the delivery of the deed, Minor recognized Hardee as the owner, paying the taxes on the land in Hardee's name, and trying to sell it as Hardee's (pp. 83–88). True, Hardee did not want the land, and was always willing to sell it for what it cost him (p. 83), and, merely through good-will, gave the preference to Minor, entirely voluntarily (pp. 32–100), though reserving the right to sell to whom he pleased (p. 87). Minor has never attempted, since the deed, so far as the evidence discloses (p. 84, bottom) to exercise any ownership, or control, over the land, except as Hardee's representative, and had and has never made any claim to any right or interest, equitable or legal, openly or secretly, to or in the land. There is no law to prevent one who honestly owes $5,898.30 to another from selling to that other land worth by estimation about $6,000.00 in payment of the debt. Nor to prevent the purchaser from agreeing to sell the land back to the grantor for the same, or similar, sum, and—there being no fraud or mistake—(and the Court below, by finding the deed valid as a security for a debt, and that Hardee had the first lien on the land, necessarily found that the transaction was untainted by fraud) the honest and clearly established intentions of the parties should be given effect. And, if this be done, the deed was valid as an uncondi-

tional sale from the date of its delivery, and the Court below erred in holding it a security for a debt, or, as subject, in any contingency, to the claim of Wilson, complainant.

II.

a. But if the intention of the parties to the contract and the deed is to be disregarded, and the deed, with the contemporaneous understanding between Hardee and Minor, is to be construed to be a security for a debt so far, at least, as Minor's creditor, Wilson, is concerned, let us see what would be its effect, under the laws of Georgia, which must govern the decision of this case.

The laws of the State in which land is situated control exclusively its descent, alienation, and transfer, and the effect and construction of instruments intended to convey it. All such laws in existence when a contract in regard to real estate is made, including the contract of Mortgage, enter into and become a part of such contract.

Brine *vs.* Ins. Co., 96 U. S. 627.
Citing U. S. *vs.* Crosby, 7 Cranch, 115.
Clark *vs.* Graham, 6 Wheat. 577.
McCormack *vs.* Sullevant, 10 Wheat. 192.
McGoon *vs.* Scales, 9 Wall. 23.
U. S. *vs.* Fox, 94 U. S. 315.

The Courts of the United States when investigating and decreeing on titles give effect to State Legis-

a. lation and State Policy: not departing, however, from what legitimately belongs to the practice of a Court of Chancery.

Holland *vs.* Challen, 110 U. S. 15 (23).
Clarke *vs.* Smith, 13 Peters, 195.

"The Complainant can ask no greater relief in the Courts of the United States than he could obtain were he to resort to the State Courts. If in the latter courts equity would afford no relief, neither will it in the former."

Ewing *vs.* City of St. Louis, 5 Wall. 413 (419).

The rules of practice of the Federal Courts sitting in equity must be made to conform to the laws of the State in which the land lies as far as may be necessary to give full effect to the rights of the parties.

Brine *vs.* Insurance Co., 96 U. S. 927.

It seems clear, therefore, that the deed in question must, as said above, be construed in accordance with the laws of Georgia, as interpreted by the Supreme Court of that State.

b. § 1969 of the Code of Georgia of 1882, is "Whenever any person in this State conveys any real property by deed to secure any debt to any person loaning or advancing said vendor any money, or to secure any other debt, and shall take a bond for titles back to said vendor upon the payment of such debt, or debts,

b. or shall in like manner convey any personal property by bill of sale, and take an obligation binding the person to whom said property was conveyed to reconvey said property upon the payment of said debt or debts, such conveyance of real or personal property shall pass the title of said property to the vendee, *Provided* that the consent of the wife has been first obtained, till the debt or debts which said conveyance was made to secure shall be fully paid, and shall be held by the Courts of this State to be an absolute conveyance, with the right reserved by the vendor to have said property reconveyed to him upon the payment of the debt or debts intended to be secured agreeable to the terms of the contract, and not a mortgage."

A deed made September 28th, 1868, to secure the payment of a debt, conveyed to the grantee the legal title of the land, and the grantor's equity was to have that conveyance of the legal title treated as a mortgage, with the right to redeem the land so conveyed on payment of the principal and interest due on the note. Not having sought to redeem, perhaps for the obvious reason that the proven value of the land was not more than sufficient to pay the debt, a verdict, in ejectment, in favor of the grantee against the grantor, was right.

Lackey *vs.* Bostwick, 54 Ga. 45.

Where deed was made and bond for titles taken by the vendor, with the intention that the entire transaction should operate as an equitable mortgage to secure a debt, the vendor cannot resist an action of ejectment by the vendee by setting up the facts afore-

b. said in an equitable plea without offering to pay the debts.

Roberts *vs.* Trammell, 55 Ga. 383 (385).
Citing Lackey *vs.* Bostwick, 54 Ga. 45.

A deed to land made in terms of the Statute (Code, § 1969) by a debtor, with consent of his wife, to secure a debt, vests title in the creditor, and recovery in ejectment may be had thereon, if the debt has matured and remains unpaid. The vendee is in the position of an ordinary vendor of land, who retains the title as security, giving a bond to convey on payment of the purchase money.

Carswell *vs.* Hartridge, 55 Ga. 412 (414).

An absolute deed conveying land in fee simple passes the legal title, though made and delivered as security for a debt, and recovery may be had thereon in ejectment by the grantee against the grantor; more especially where a contemporaneous instrument stipulating for a surrender of the deed, if the debt is paid at maturity, contains a covenant for admitting the grantee into possession if the debt is not so paid, and where, in pursuance of the covenant, the grantor has recognized the grantee as landlord and paid him rent. The grantor may defend successfully by pleading an equitable plea and doing equity, that is, tendering the debt and interest.

Biggers *vs.* Bird, 55 Ga. 650.
Citing Lackey *vs.* Bostwick, 54 Ga. 45.

Land lawfully conveyed, with consent of the debtor's wife, to secure a debt, becomes the creditor's property, and neither the debtor himself, nor his family

b. after his death, can take a homestead in the same as against the creditor until the debt is paid.

Johnson *vs.* Griffin Bnkg. & Trust Co., 55 Ga. 391.

An absolute deed to secure a debt, with bond for tiles to reconvey, passes the legal title, which can be divested only by payment, or tender, of the debt it was given to secure.

Broach *vs.* Barfield, 57 Ga. 601.

A conveyance to secure a debt, made under the Act of 1871, passes title, and defeats all rights to homestead in the land covered by such deed.

Isaacs *vs.* Tinsley, Extr., 58 Ga. 457.

Where deed with bond to reconvey was given it passed the title. For a subsequent creditor of the grantor to subject the land he must first redeem it.

Jarvis & Wilson *vs.* Burke, 59 Ga. 232.

The same is true if wife did not consent, and without reference to the Act of 1871 (Code, §§ 1969–1971).

West *vs.* Bennett, 59 Ga. 507.

When the law is complied with the title passes. The wife's joinder in deed is sufficient. In this case the land was first mortgaged, but the mortgagee being dissatified with his security the deed and bond were substituted therefor.

Christopher *vs.* Wilkins, Extr., 59 Ga. 779.

Deed absolute on its face, with written assent of

b. wife, passes title; if the land is more valuable than the amount set forth in the deed, equity might give relief, and the land be ordered sold that the debt might be paid, and the overplus given to the debtor.

Woodson *vs.* Veal, 60 Ga. 562.

A deed in fee simple, and bond to reconvey, do not separately or together indicate the creation of a mere lien, but the purpose indicated is to divest the grantor of title and to vest the title in the grantee until the payment of the debt. To take a bond for a future conveyance and then deny that the maker of the bond had any estate in the premises at the time he gave the bond, no fraud or mistake being alleged, is idle and inconsistent. The plaintiffs in *fi. fa.* on a junior judgment have the right to redeem the land and then levy and sell.

Gibson *vs.* Hough & Sons, 60 Ga. 588.

Wife's consent not necessary to pass title, whether bond for reconveyance given or not. The legal title is in the creditor from the executon and delivery of the deed, and the right to enter was consequent upon such title, unless negatived by evidence, no bond for title, nor stipulation as to possession, appearing.

Braswell *vs.* Suber, 61 Ga. 398.

Bill of sale of personal property, with no bond for title, but intended as security for a debt, passed title until debt was paid, and the grantees could recover without reference to the Code (§§ 1969–1970).

Perdue *vs.* Powell & Murphy, 63 Ga. 159.

Any deed intended to secure a debt, whether it con-

b. forms to Statute of 1871 (Code, § 1696) or not, in which it appears that the title was intended to pass, is not a mortgage, and the debtor must pay the debt or give up possession of the land. Judgment evicting grantor at a suit of grantee affirmed.

Carter *vs.* Gunn, 64 Ga. 651.

Deed to secure a debt passes the legal title and will authorize a recovery in ejectment. (The deed in question was an ordinary Warranty Deed; no bond to reconvey.) The only real defense is to pay up the debt.

Dykes, Trustee, *vs.* McVay, 67 Ga. 502.

A conveyance of absolute title may be made to a creditor to secure a debt outside of the Code §§ 1969, 1970, 1971.

Rowland, Admn'r. *vs.* Coleman & Co., 76 Ga. 652 (654.)

A deed absolute in its terms, conveying fee, an entry thereon signed by grantee that deed will be returned canceled if debt be paid in a certain time, does not convert the deed into mortgage. Possession remaining in grantor he holds under grantee, and no prescription or statute of limitations will be a defense. Appropriate and equitable relief could be administered with proper proceedings.

Jay *vs.* Whelchel, 78 Ga. 786.

Under these authorities, we think it incontrovertible that the Deed of Feby. 6th, 1877, from Minor and his

b. wife (p. 27) to Hardee, even viewed as a security for a debt, passed the title out of Minor into Hardee, with the right in Minor, or Minor's creditor, Wilson, to redeem at any time, while that right of redemption remained, but no longer. That is to say, the land was absolutely Hardee's, and could be redeemed only by payment of the debt, and the creditor, Wilson, would have had the right to so redeem it at any time while such right would have remained in Minor had it been the intention of Minor and Hardee that the conveyance should be, as between them, but a security for a debt. But, if for any reason, other than fraud, or want of valuable consideration, the right of redemption in Minor should cease, and the deed become absolute in every sense of the word, and be no longer a security for, but a satisfaction of, a debt, then the right of Minor to redeem by paying a debt that would, under such circumstances, no longer exist, would necessarily cease also; and Wilson would have no right, in the absence of any fraud, greater than the right of the grantor.

Now, whatever may be thought of the relations between Hardee and Minor as to Minor's right to redeem at the time of the making of the deed, and up to the 29th of January, 1878; whatever may be the fact as to the amount of the debt owed by Minor to Hardee on the 6th of February, 1877, or subsequently, it cannot be denied that on the 29th day of January, 1878, Minor owed Hardee $5,836.13, (p. 114 bottom); was utterly unable to pay it; and sold, as Hardee's agent, in Hardee's name, and by Hardee's consent, the land to J. R. Thigpen (pp. 83–97) for $6,000,00, $1,000 cash, and $5,000.00 in two notes for $2,500.00 each, due respectively Jany.

b. 1st, 1879, and 1880 (p. 115). Hardee, for his own purposes, and with no agreement or understanding so to do, and without the knowledge of Minor, so far as the evidence discloses, but merely to know how much the land stood him in (pp. 99–138), credited this $1,000.00 to Minor's account, and closed it by profit and loss, March 28th, 1878 (p. 115), and on same date opened an account with Thigpen, beginning with the two notes, and not crediting him with the $1,000.00, as that had been credited to Minor (p. 115).

Thus between January 29th and March 28th, 1878, we find that whatever right of redemption Minor may have had, he voluntarily, absolutely, and in good faith, surrendered it to Hardee, gave up even the semblance, if such had existed, of possessing the land, and recognized it as the property of Hardee's assign, Thigpen. There was no reason why any change should have been made in the situation if Minor was to still have the right of redeeming; the property would have been as safe from interference in Hardee's name as in Thigpen's, perhaps more so as Thigpen was Minor's brother; and when Thigpen could not pay his first note when it became due, he, Thigpen, in his turn, surrendered the land to Hardee (p. 97), and on April 14th, 1879, Minor, and Thigpen, the brother, became tenants of Hardee to January, 1882, under a written lease, paying rent thereunder (pp. 38–76), with a new and distinct agreement as to the purchase of the land at a fixed and stipulated price; and, failing in this other attempt to purchase, January 20th, 1882, Minor, with Thigpen, the father, again became a tenant, by written lease, this time for five years (p. 78), paying rent regularly thereon, and with a similar agreement to be allowed to pur-

b. chase for the same stipulated price. No fraud; no mistake; the title in Hardee to secure the payment of an actual debt; the debt and the value of the land about equal; the actual and visible impossibility of redemption; the voluntary surrender by Minor, in good faith, of whatever right of redemption he may have had in payment of the debt; the good faith of the surrender shown by the selling of the land to another as Hardee's property by Minor, as Hardee's agent, and, on the failure of that sale, the renting of it as a *bona fide* tenant, with his brother, from Hardee, first from 1879 to 1882, and, again, with his father, from 1882 for five more years; would certainly seem to have rendered the deed of February 6th, 1877, from the time of the undoubted surrender of the right of redemption, if such right had ever existed, thenceforth, an absolute, irrevocable, irredeemable transfer of the title to Hardee, his heirs and assigns forever. If this be not so, it would seem to be impossible to so convey land in payment of a debt equal to the value of the land as to give a quiet title.

It will be observed that there is nothing in any of the citations from Georgia authorities in conflict with this view. In each and every case cited, (and we cite all that we could find which we thought bore upon the question,) while it is stated that payment was a legitimate defense, and would redeem the land, and, under some circumstances could be made by a creditor, the right of redemption still existed, had never been terminated either by operation of law, or the

b. act of the parties; and in no case where recovery had been had by an action of ejectment was it held that a creditor could come in and investigate the accounts between the parties to see whether the title of the true owner could not be disturbed by showing that the land, at the time of the investigation, was worth more than the debt decreased by the profits and increase made out of the land since the title had become absolute and unconditional; or that the debt was less than the parties considered it; or had been decreased by subsequent dealings after the possession by ejectment, or, what we think is equivalent, and even stronger,—as it is by consent, and without fraud,—after the voluntary surrender, in good faith, by the grantor, of the land, and any and every right he could be supposed to have, or to have had, to redeem it.

True, in Broach *vs.* Barfield, 57 Ga. 601, the Court said, "To redeem land, held by absolute legal title as security for a debt, the debt must be paid or tendered; and, generally, a tender will be effective, though delayed till after the creditor has recovered possession of the premises by action," but this was pure *obiter dictum*, deciding no point contained in the case, and was a mere voluntary expression of the then views of the Court on that subject.

But in Thaxton *vs.* Roberts, 66 Ga. 704, the actual point was in the case and the Court there held (p. 704) "Where there has been a verdict and judgment in an action of ejectment upon a deed to land, although it may have been executed alone to secure a debt, it is conclusive between the parties and their privies upon all questions arising under the deed and its consideration which would have been the subject of a legal

b. defence" (citing 32 Ga. 363; 37 Ga. 583; 22 Ga. 60; 23 Ga. 366).

And in Crawford *vs.* Pritchard, 81 Ga. 14, where the Statute of 1871 had been complied with by a judgment for the debt, a reconveyance from the grantee-creditor, a sale by the sheriff, and a purchase by the same creditor; upon an attempt to redeem, the Court says (p. 18), "We think it was entirely too late; indeed we know of no law which recognizes the right of a debtor to redeem at all after the statute has been pursued to a conclusion and the debt paid off from the proceeds of the property. We are referred to Broach *vs.* Barfield, 57 Ga. 601, as a case which gives countenance to the supposed right; but it is not in point;" and referring to the other cases cited (54 Ga. 554; 55 Ga. 414; 58 Ga. 457; 59 Ga. 507; 64 Ga. 651; 66 Ga. 704; 67 Ga. 504; 73 Ga. 389; 74 Ga. 465) the Court adds: "from none of these can the right to redeem be deduced in the state of circumstances shown to exist in the present case. We think the title, legal and equitable, of the creditor, became complete and indefeasible when, after pursuing the statute, he obtained the sheriff's deed conveying to him as a purchaser at the official sale the property now in dispute."

It being clear, therefore, that under our Georgia law, as enunciated by the Supreme Court of Georgia, such deeds to secure title become absolutely indefeasible.

1st. When there has been a recovery in ejectment bythe grantee, and

b. 2nd. When there has been a compliance with the act of 1871, by reconveyance, levy and sale, the debt being paid by the creditor becoming the purchaser.

We think there can be no question that it also becomes indefeasible and absolute when precisely the same state of ultimate facts is brought about by the voluntary, unquestioned, *bona-fide*, acts of the parties, without invoking the aid of the machinery of the law.

The precise proposition here urged has never, so far as we know, been brought before a Court. That persons who have given deeds to secure a debt have subsequently surrendered their equity of redemption, without litigation, thus vesting the complete title, legal and equitable, irrevocably in the grantee, cannot be doubted: and such surrender would appear to have never before been questioned.

Under any view that may be legitimately taken of the facts in this case, the title to plantation No. 12½ C. R.R. passed into Hardee on Feby. 6th, 1877, and he was, with reference to his agreement, or understanding, with Minor, in the view most favorable to Wilson, in the position of an ordinary vendor of land who had agreod to sell the land to Minor, and retained the title as security, giving a bond to convey on payment of the purchase money.

Carswell *vs.* Hartridge, 55 Ga., 412 (414).

And Minor, after Jany. 29th, 1878, was in the position of a purchaser holding a Bond for title con-

b. ditioned to convey upon payment of the purchase money, but who had not paid, and found it impossible to pay, any part of the purchase money, and who therefore voluntarily and honestly canceled and surrendered the Bond.

There was no written bond in this case to be canceled and surrendered, but if Minor had such right as the bond would have given him, by virtue of an oral agreement or understanding, he would necessarily have had the same power of cancellation and surrender as if it had been in writing. And the surrender in this case being beyond question in good faith, without fraud of any sort, with no benefit or trust, secret or open, to Minor or any one else for him or his, we think that no creditor could come in subsequently, and force the vendor to carry out with him a contract which had then been voluntarily and legally abandoned by the parties to it, thus undoing and destroying rights which had become absolutely vested in accordance with the laws of Georgia.

III.

With reference to the correctness of the second report of the Master, we trust it is unnecessary to say very much. Seemingly not an expert accountant, and evidently never having understood the system upon which Mr. Hardee's books were kept, error was naturally to be anticipated from him. Accordingly we find in his first report (p. 38) that on Feb. 6th, 1877, Minor owed Hardee $5,836.13, while by turning to his (the Master's) certified transcript

from the books on which he based his report, p. 114, bottom, we find that that amount ($5,836.13) was the balance due on Jany. 29th, 1878, and that that balance included the guano notes so often referred to (see p. 114, entry of Sept. 4th, 1877), and that on Feb. 6th, 1877, the Ledger B, (personal account) balance (p. 113) was $3,882.30, not including any of the guano notes from Ledger D. So this carelessly and ignorantly prepared report was properly set aside, and the matter re-referred.

In his second, and last, report, the Master says (p. 41) that the amount due from Minor to Hardee on Feb. 6th, 1877, was $4,000.62, being the personal Ledger B. balance of that date, $3,882.30 increased by $118.50 (this 50 cents is clearly a typographical error, as the amount sworn to by Hardee was $118.32—p. 137, top—which would make the 62 cents of the report), sworn to by Hardee but not on the books (p. 42), but he, the Master, leaves entirely out of consideration here or elsewhere in his report the guano notes for $4,7~~48.00~~ (p. ~~71~~ 114) on which there was ~~still~~ due $2,160.00 less $144.00 freight—$2,016.00. This is shown by the account rendered to and accepted by Minor in good faith (p. 9) the day of the date of the deed, and the subsequent entry of these and the other guano notes from Ledger D, Sept. 4th, 1877 (p. 114).

Clearly, then, on his own figures as contained in his second report, the Master allows over two thousand dollars too little to Hardee, and with these extremely palpable errors in view, it would be difficult to even surmise how many errors exist undisclosed by the somewhat incomplete statement which he submits.

We are entirely satisfied that a correct report would show that at no time since the conveyance of the land to Hardee has the debt due to him by Minor been less than about the value of the land, which seems to be about $6,000.00 (Mr. B. J. Wilson, complainant says the land is worth $10,000 (p. 94), but his son, J. B. Wilson, says from 15 to 17½ per acre, which is from $6,000 to $7,000 (p. 61), and complainant's other witnesses say as follows: Adams (p. 53, top), 12½ per acre, =$5,000; Henderson (p. 54), 15 per acre, =$6,000; Newcome (p. 57, middle), 12 per acre, =$4,800; Tanner (p. 59, middle), $12½ to $15 per acre, =$5,000 to $6,000. And Minor says (p. 83, middle) he considered $6,000 a big price for it, and Hardee has never been able to get that for it, so we feel justified in rating it at about $6,000, and even if the $1,000 paid by his brother be credited to him, he would, as we think, still owe something over $5,000.00.

But, as we have said, we do not wish to trouble the Court with these figures. The Master's report bears internal evidence of its own incorrectness, and that it should therefore have been set aside on the motion to that end in the Court below.

All of which is respectfully submitted.

CHARLES N. WEST,
WM. D. HARDEN,
Of Counsel for Appellant.

JURISDICTION.

It may be objected to the consideration of this case by the Court, that the Supreme Court has no jurisdiction, upon the ground, that the decree appealed from is not final. The Court will observe that the Circuit Court, by the terms of the second decree, evidently considered the first not final, and intended the second as its final decree. The expressions admit of no other conclusion.

It is submitted that the intention of the Circuit Court, in making a second decree, will govern this Court as to which decree was final.

In Rubber Co. vs. Goodyear, 6 Wall. 153, two decrees were taken.

(1) A decree over-ruling exceptions to the masters report; confirming the masters report; assessing the damages against the respondents.

Subsequently, a second decree, in almost the identical terms of the first, but called by the Circuit Court a final decree, was made. Of the second decree the Supreme Court said thus: "We do not question that the first entry had all the essential elements of a final decree, and if it had been followed by no other action of the Court, it might very properly have been treated as such. But we must be governed by the obvious intent of the Circuit Court, apparent on the fact of the proceedings. We must hold therefore, the decree of the 5th of December to be the final decree."

Likewise in Wheeler vs. Harris, 13 Wall. 51—where there were two decrees,—of the second the Court said: "It is quite true that two appeals are not allowed in the case of the same question. We must determine which one of the two must be dismissed. It may be the first appeal was from a decree which might be termed as final, if the second decree had not been rendered. But it is obvious that the Circuit Judge did not regard it as

final, and it was certainly defective." The appeal from the second decree was sustained.

But it is also submitted that even if the Circuit Court had not so intended, the first decree was not final, and the second was The authorities upon that subject proceed upon the following principle:

—Where the rights of the appellant have been adjudicated by the decree, except such as are reserved and referred by the decree for future disposition, if that disposition must be made by another decree judicially determining those rights, the first decree is not final.—

Young vs. Smith, 15 Pet. 287. Perkins vs. Fourniquet 6 How. 206. Pulliam vs. Christian, Ibid. 209. Barnard vs. Gibson, 7 How. 650. Craighead vs Wilson, 18 How. 199. Crawford vs. Points, 13 How. 11. Beebe vs. Russell, 19 How. 283. Ogilvie vs. Knox Ins. Co., 2 BL. 539. Humiston vs. Stainthorp, 2 Wall. 106. Railroad Co. vs. Swasy, 23 Wall. 405. Green vs. Fisk, 103 U. S. 518. Grant vs. Phœnix Ins. Co., 106 U. S. 429. Dainesi vs. Kendall, 119 U. S. 53. Parsons vs. Robinson, 122 U. S. 112. Burlington, etc. R. R. Co. vs. Simmons, 123 U. S. 52.

It is respectfully submitted, in the light of these authorities, that it was not the intention of the Court in the first decree to pass a decree which could have been carried into execution, until the claims of the various parties upon the property should have been judicially ascertained; and that in fact, it was not possible for the Marshal to sell the property until it had been judicially ascertained what were the claims upon it.

It may also be said against the jurisdiction, that the amount in dispute was not $5,000, because such was not the sum between the original debt of Hardee and the

amount allowed him by the master. If Hardee's contention in this cause had been as to the legality or the amount of his debt, this contention would be well supported, and the Court would be without jurisdiction. But such is not the case. Hardee's claim was not of a *debt against* the property, but *to the property itself;* and the proceedings before the master were simply for his full protection under every view of the case. His position before the Court was, that he was not a creditor after the surrender of the property, but its legal owner; and to decide (upon a motion to dismiss for want of jurisdiction) that the amount of his debt was not sufficient to support the jurisdiction of the Court, would be to decide upon the merits of his case, that he was a *creditor*, and not the *owner*.

From the rule testing the jurisdiction by the amount of debt, the Court has always withdrawn those cases in which the appellant's claim was not to a debt, or to a money interest in the property, but to the property itself. This distinction is illustrated by appeals in replevin. In such cases, the amount for which avowry is made furnishes the test of value; but if the writ be issued to try the title to the property, the value of the article replevied is the matter in dispute.

Peyton vs. Robinson, 9th Wh. 527.

United States vs. 84 Boxes of Sugar, 7th Pet. 453.

Market Co. vs. Hoffman, 101 U. S. R. ~~264~~ 112

Freeman vs. Dawson, ~~100~~ 110 U. S. R. 264.

Estes vs. Gunter, ~~122~~ 121 U. S. R. 183.

Wm. D. Mason,
C. N. Wash
of Counsel for Appellants

146 U.S. 179

Office Supreme Court, U. S.
FILED.
OCT 28 1892
JAMES H. McKENNEY,
CLERK.

RECORD, CASE No. 13,515.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1892.

TERM No. 34.

JOHN L. HARDEE, APPELLANT,

vs.

BENJAMIN J. WILSON, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF GEORGIA.

BRIEF

FOR APPELLEE.

RUFUS E. LESTER,
THOMAS P. RAVENEL,
LIVINGSTON KENAN,
Of Counsel.

MORNING NEWS PRINT, SAVANNAH, GA.

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BRIEF FOR APPELLEE.

Statement.

Benjamin J. Wilson, a British subject, filed his bill August 1st, 1879, in Washington Superior Court, against James M. Minor, formerly known as James M. Thigpen; Annie E. Minor, his wife, and John L. Hardee, a merchant of Savannah, Georgia, trading as N. A. Hardee's Son & Co., to set aside a deed made March 18th, 1876, by J. M. Minor, without consideration, to himself, as trustee for his wife, to a tract of four hundred and fifty (450) acres of land in Washington county, Georgia, for use of wife for life and to her children after her death, with power to James M. Minor to manage, protect and sell property with consent of wife, on the ground that at the time said deed was made he was insolvent, being unable to pay his debts and being largely indebted to complainant, who sued him to the September term, 1876, of Washington Superior Court, on a note for $2,900, on which judgment was obtained at March term, 1877, for $2,900 principal and $1,234 interest. And also to set aside as fraudulent, or to declare it to be security for debt only, a deed to same land, but described as 400 acres, made February 6th, 1877, by said James M. and Annie E. Minor

to said John L. Hardee for the alleged consideration of $4,000; that it was made pending the suit by complainant against Minor, and only a few days before judgment was rendered, and with full understanding between Minor and Hardee that the same was to be a security for a debt.

Prays that trust deed be declared null and void, and that if Hardee's deed is valid he may be at liberty to redeem by paying principal and interest, which may appear to be due to Hardee, and for general relief.

Record p. 12. Original p. 25.

Minor and his wife and John L. Hardee answered bill.

Minor and his wife in their answer nowhere deny Minor's insolvency at the time of making the deeds. Admit the making of the deeds, and that the trust deed was voluntary and void against Hardee, to whom Minor was largely indebted, and that neither himself nor his wife intended to claim any part of said land against said Hardee until all of the indebtedness to Hardee was fully paid.

That the deed to Hardee was made in pursuance of a contract previously made and in settlement of a debt and not as security, and that Hardee is the absolute owner of the property.

Record p. 32. Original p. 78.

Hardee in his answer nowhere denies Minor's insolvency in 1876, but says that in the year 1876, when calling upon Minor for settlement of balances, he said he could not pay and proposed to sell the land by absolute deed in satisfaction of the debt, amounting to about $5,800.

Hardee asserts a contract to sell the land for $4,000, but says he took it to pay the whole indebtedness, and claims the land as his.

Record p. 4. Original p. 11.

The decree rendered May 3d, 1884, by the Hon. J. W. Locke, declared the trust deed made March 18, 1876, void. And the deed from Minor and wife to Hardee of February 6, 1877, to be a security for a debt, the amount of which was to be determined by reference to a master. And that the amount of Wilson's judgment be a lien on the land after satisfaction of amount due to Hardee.

The master was directed to examine and state the amount due, computing from amount due at date of said deed from Minor to Hardee, allowing interest and charging rents actually received.

Record p. 36. Original p. 89.

The master reported as due to Hardee at the time the deed was made $4,000.62, on which interest was allowed, and that rents had been collected amounting to $3,893.30, leaving a balance due to Hardee, after calculating interest at legal rates, of $1,784.76.

Record p. 41. Original p. 100.

The master's report upon exceptions filed was, by decree of the Hon. Don A. Pardee, rendered December 12, 1887, confirmed, and the marshal was ordered to sell the land and, after paying costs, to pay the

said Hardee $1,785.76, with interest from April 13, 1885, and, after payment of same, from balance, if any, to pay Wilson $2,900 principal, $1,234 interest, and interest upon the principal since May 7, 1877, and the balance, if any, to Hardee for account of Minor.

Record, p. 43; Original, p. 106.

To this decree John L. Hardee enters his appeal December 12, 1887.

Record, p. 44; Original, p. 107.

ADDITION TO STATEMENT IN APPELLEE'S BRIEF

To Supply Deficiencies and Correct Errors in Appellant's Statement of Facts.

The contract of January 5, 1876, referred to in appellant's brief, "statement of facts," p. 1, was never in Hardee's possession.

Hardee, in his testimony (Record, p. 97; original, p. 244), uses this language:

> "The paper attached to Minor's interrogatories, purporting to be an agreement between him and myself, dated January 5, 1876, was never in my possession. I never saw it until I saw it in this record."

Another peculiarity about this contract of January 5, 1876, was that A. H. Trawick, the justice of the peace whose name appears as a subscribing witness, denied the genuineness of the signature or that he had witnessed the paper (Record, p. 89; Orig., p. 226), or that he knew the other witness whose name appeared as a witness to the paper.

Record, p. 89; Orig., p. 226.

Appellant, in his brief, statement of facts, pp. 2 and 3, uses this language:

> "Minor owed at the time, February 6th, 1877, according to the testimony of both Hardee and Minor, something over $5,800.00 (pp. 6, 9, 32, 67, 84, 85, 87, 88). The exact amount was $5,898.30, being the ledger balance of $3,882.30 (pp. 12–113), plus sixty tons of guano at $36.00=$2,160.00, less credit by freight, $144.00."

This portion of appellant's statement of facts and the succeeding passages are not sustained by the testimony of Minor and Hardee,

nor by the accounts attached to Hardee's answer (Record, pp. 8 to 12), the accounts attached to Minor's testimony, marked Exhibit B (Record, pp. 72 to 75), and the accounts certified to by the master from Hardee's ledger (Record, pp. 108 to 115).

The price of the sixty tons of guano, less freight, added to the balance in the ledger, gives the amount claimed in appellant's brief, statement of facts, to be due, viz: $5,898.30, and appellant refers to Record, p. 9, to verify this statement.

Our statement on this subject is that Hardee and Minor, in their testimony, have made conflicting statements, and the several accounts which purport to come from Hardee's books are also conflicting and inconsistent with the extracts from the ledger as certified to by the master.

For instance, appellant refers to page nine of the Record, which is a statement of account attached to Hardee's answer, to show that Minor owed Hardee for sixty tons of guano shipped during the month of January, 1877, and that this amount did not get into the ledger until fall, when it all appears together as an entry of a guano note of $4,798.80, as appears by an entry of September 4, 1877, in the ledger. (See Record, p. 114.)

This statement of account on page 9, it will be observed, is attached to Hardee's answer, and is dated February 6, 1877, and is neither found in the statements attached to Minor's testimony as Exhibit B, nor in the extracts from Hardee's ledger, certified to by the master, nor does it appear by the testimony of either Minor or Hardee that such a statement was ever rendered by Hardee to Minor; but, by reference to a statement of account made by Hardee to Minor and attached by Minor to his testimony as Exhibit B, dated February 6, 1877 (Record, p. 73), we find Hardee rendering a statement as follows:

"DR.

"To sales guano	$3,690 00	
"To freight on same	147 60	
"To balance to your credit in P. A.	208 00	
		$4,045 60

CR.

"By sundry bales cotton, @ 15c. and 14½., per statement	$3,676 60	
"Commission, 10%	369 00	
		$4,045 60

"E. & O. E. Savannah, Ga., Feb'y 6th, 1877."

John M. Bryan, Hardee's book-keeper, verifies Exhibit B to Minor's testimony as being in his handwriting.

Record, p 81; Orig., p. 203.

"This balance of $208 to Minor's credit in P. A." will be found credited to Minor's account, brought down to February 6, 1877, so as to give the balance of $3,882.30. See Record, p. 12, statement attached to Hardee's answer, where it appears "Feb'y 6, 1877, balance on guano, 208;" again, Record, p. 72, statement, Exhibit B, attached to Minor's testimony, where it appears, Feb'y 6, 1877, "by bal. guano ac per ac. rend., 208.00;" and again, Record, p. 113, extracts from Hardee's ledger, certified to by master, "Feb'y 1st, 1877, by guano B. K. D. 141, 208." So instead of Minor owing Hardee a balance on guano account February 6th, 1877, it seems there was a credit to Minor's guano account.

It therefore appears that there is nothing in the record on which to base the conclusion that Minor owed Hardee for 60 tones of guano February 6, 1877, not in the ledger, except a statement of an account attached to Hardee's answer, not verified by any testimony, notwithstanding his books were called for and his book-keeper examined; but this statement of account is absolutely inconsistent with Hardee's testimony, given December 20, 1884, on re-examination, after the master's first report, where he uses this unequivocal language:

> "The total amount which Minor was indebted to me on the 6th day of February, 1877, was $4,000.62."
>
> Record, p. 137; original, p. 331.

The master called attention to this statement of Hardee's, and to the fact that the testimony of Hardee of December 20, 1884, was very different from the testimony filed November 1, 1884.

See Master's Report, Record, p. 41.

The peculiar fact that the consideration of the deed was fixed at $4,000 is explained by this testimony, as it appears it was only 62 cents less than the amount Hardee finally admitted was due at the date of its execution, February 6, 1877. When these inconsistent statements of Minor and Hardee are thus exhibited to view it has very much the appearance of a combination by Minor and Hardee to prevent Wilson from subjecting Minor's land to the payment of his judgment, notwithstanding their denial of the charge.

Again, appellant in his brief, statement of facts, p. 3, middle of page, says: "While the deed was thus absolute and in no sense, so far as the intention of the parties are concerned, a security for a debt" * * *

We suggest that a fair statement of the case on this point would be that while the deed was absolute on its face and the consideration was the actual indebtedness of Minor to Hardee at the time, the intention of the parties was to secure the indebtedness and not to pay it, as is clearly shown by the manner in which the parties afterwards treated the indebtedness.

This question of intent, we claim, is the point in the case, and will be found discussed in our brief of argument.

3

BRIEF OF ARGUMENT.

FIRST.

The land in question was subject to the lien of Wilson's judgment.

Wilson obtained a judgment in Washington Superior Court against Minor, March term, 1887, for $2,900 and interest upon an indebtedness contracted in 1871.

Record p. 28. Original p. 69.

This judgment was a lien upon all the property of the defendant, Minor, from its date.

The Code of Georgia, § 3850, is as follows:

> "All judgments obtained in the Superior, Justices or other Courts "of this State shall be of equal dignity, and shall bind all the "property of the defendant, both real and personal, from the date "of such judgment."

SECOND.

Was the trust deed from Minor for the use of his wife void as against creditors?

The deed from Minor in trust for his wife was a voluntary deed and void against his creditors, of whom Wilson was one: because he was insolvent at the time.

Code of Georgia, § 1952, ¶ 3, is as follows:

> "The following acts by debtors shall be fraudulent in law "against creditors and as to them null and void. * * *
>
> "3. Every voluntary deed or conveyance not for a valuable "consideration made by a debtor insolvent at the time of such "conveyance.

Was James M. Minor insolvent at the time of making deed of trust to self in trust for wife and children, viz.: March 18, 1876?

Bouvier in his Law Dictionary defines insolvency as follows:

> "Insolvency is defined to be the debtor's inability to pay his "debts, and is attended by no legal badge of notoriety or pro- "mulgation. Insolvency is a term of more extensive signification "than bankruptcy, and includes all kinds of inability to pay a just "debt."

The same writer defines an insolvent as follows:

> "A person is said to be insolvent who is under a present in- "ability to answer, in the ordinary course of business, the respon-

"sibility which his creditors may enforce, by recourse to legal "measures, without reference to his estate, proving sufficient to "pay all his debts when ultimately wound up."

"3 Dowl & Ryl. Rep. 218.
"1 Maul & Sel. Rep. 338.
"1 Campb. Rep. 492. N.
"Sug. Vend. 487–488.
"1 Bouv. L. Dic. Title "Insolvent."

Minor and his wife, in their answer, say, deed was voluntary and void against the said Hardee, to whom Minor was largely indebted, and neither himself nor wife intended to claim any part of said land against Hardee until all of the indebtedness to Hardee was fully paid.

Answer of J. M. Minor and Annie E. Minor. Record p. 32. Original p. 78.

The answer of Minor and wife does not deny the charge in complainant's bill that Minor was insolvent March 18, 1876.

Record p. 31. Original p. 75.

Hardee in his answer nowhere denies Minor's insolvency in 1876. On the contrary, in his answer, he says:

"In the year 1876, when calling upon Minor for settlement of "these balances, he said he could not pay and proposed to sell me "the land in controversy by absolute deed in satisfaction of my "debt, then amounting to about $5,800, besides interest."

Answer of J. L. Hardee. Record p. 5. Original p. 13.

Irwin L. Adams, a planter and neighbor of Minor's, witness for complainant, in his testimony, says, in answer to sixth direct interrogatory:

"If he (Minor) had any other property at that time (February, "1877, and March, 1876,) I did not know it."

Testimony of I. L. Adams. Record p. 53. Original p. 130.

The same answer again.

Record p. 54. Original p. 132.

Jasper W. Henderson, a farmer and neighbor of Minor's, witness for complainant, in his testimony says:

"If he (Minor) had any other property I did not know it," (referring to 1876 and 1877).

Testimony of J. W. Henderson. Record p. 56. Original p 139.

H. K. Newsome, a farmer and neighbor of Minor's, in his testimony says:

"Don't know if Minor had any other property or not," (referring to 1876 and 1877).

Testimony of H. K. Newsome. Record p. 58. Original p. 145.

W. V. Tanner, a farmer and neighbor of Minor's, in his testimony says.

"I don't know if he had any other property in 1877 or not."

Testimony of W. V. Tanner. Record p. 60. Original p. 150.

J. Ben Wilson says he knew of Minor's bankruptcy about that time.
Testimony J. B. Wilson. Record p. 62. Original p. 157.

J. M. Minor, in his testimony, says:

"In the latter part of 1875 I was badly indebted to John L. "Hardee, and at that time he was pressing me for a settlement, "demanding money or deeds to real estate to secure it."

Testimony of J. M. Minor. Record p. 67. Original p. 170.

Again Minor says:

"On March 18, 1876, I owed Hardee between $7,000 and $8,000."

Testimony of J. M. Minor. Record p. 68. Original p. 175.

"In March, 1876, I expect I owed as much as I was worth, or "more, perhaps."

Testimony of J. M. Minor. Record p. 86. Original p. 217.

B. J. Wilson, in his testimony, says:

"Minor told me he could not pay me unless I compromised "with him."

Testimony of B. J. Wilson. Record p. 94–95. Original p. 238.

Referring to Minor's other property John L. Hardee says in his testimony:

"Minor told me that the mules, etc., were all dead or gone."

Testimony of J. L. Hardee Record p. 98. Original p. 249.

It would seem from the above that Minor was unable to pay his debts when he made the voluntary deed, and was an insolvent within the meaning of the law at that time.

THIRD.

The deed made by J. M. Minor and Annie E. Minor to John L. Hardee, February 6, 1877, was given to secure a debt not in payment of a debt.

Hardee in his answer, in answer to a direct interrogatory to him, uses this language:

"The deed from J. M. Minor and Annie E. Minor was made in "settlement of advances and indebtedness to me by James M. "Minor. I took the land in payment. I told him I did not "want the land, and if he could raise the money I would rather "he would take the place back. * * * The deed from Minor "was unconditional and not made to secure a debt.

"I did not agree to reconvey to Minors or either of them or any "one else for them than is stated above."

Hardee's answer. Record p. 5. Original p. 13.

He says in same answer:

"In order to make my title to the land and premises good, his "wife, Mrs. Annie E. Minor, also signed the deed."

He says he is pretty certain he did not know of the deed by Minor to himself in trust for his wife and children.

Hardee's answer. Record p. 5. Original p. 12.

Again Hardee in his testimony says :

"I never knew of the deed made by Minor to his wife until I "read it in the record in this case."

Hardee's testimony. Record p. 99. Original p. 250.

Hardee's insisting upon Mrs. Minor's joining in the deed is a significant fact to show that he had in view securing the debt, as there is no dower in Georgia in land sold by husband during the coverture.

Code of Ga. § 1763.

So there was no reason for Annie E. Minor to join in this deed unless it was to be a security for a debt, when under the Acts of 1871, Code of Ga. § 1969, the consent of the wife was required.

The consent of the wife is not now required, but was in 1877.

See Acts of Ga. 1884-5, p. 57, amending Code of Ga. § 1969.

It is a most unusual thing for a wife to join her husband in a deed to land in Georgia No well-informed business man or lawyer would insist upon it. Hardee says he did insist upon her signing, but did not know of the deed of Minor in trust for her at that time.

Hardee's testimony. Record p 99. Original p. 250.

Let us see now whether Hardee's subsequent acts do not disprove his assertion that the intention was to pay the debt and not secure it by the deed of February 6, 1877.

This deed was mailed by Minor to Hardee by letter. By letter dated March 14, 1877, addressed to Minor, Hardee acknowledges receipt of deed and states:

"As soon as recorded will send you bond for title."

Record p. 103. Original p. 260.

Hardee in his testimony says deed was received a few days before it was recorded and says it was recorded March 4th, 1877. This is an error as the record shows it was recorded March 29, 1877.

Record p. 28. Original p. 67.

Again in his testimony Hardee says:

"I had an understanding with Minor that he could have the "land on payment of his indebtedness to me and the interest "thereon, and I am willing to do that now. *My* promise to give "Minor a bond to reconvey the land, but failed to do so."

Hardee's testimony. Record p 28. Original p. 276.

A mortgage in Georgia is only a security for a debt.

Code of Georgia § 1954.

By the Act of 1871 now incorporated in the Code of Georgia, § 1969, 1970 and 1971, parties may make absolute deeds "to "persons loaning or advancing money," or to secure "any other "debt" and shall take bond for titles back to such vendors upon "the payment of said debt. Such conveyance shall pass the title "to the vendee provided that the consent of the wife has been "first obtained"—(These last words were stricken by acts 1884-5, p. 57)—"till the debt or debts which said conveyance was made to "secure shall be fully paid."

§ 1970 provides for enforcing the payment of the debt by suit, judgment, reconveyance and sale.

§ 1971 protects the vendor in his right to a reconveyance.

When Hardee therefore speaks of a "bond for titles" in his letter of March 14, 1877, acknowledging receipt for deed, he clearly has reference to the "bond for titles" usual in deeds to secure loans.

And when he speaks of an understanding with Minor that he could have the land upon payment of his indebtedness to him and the interest thereon, and speaks of his promise to give Minor a bond to reconvey, but failed to do so, the conclusion is unavoidable that a security was all that was intended notwithstanding his denial in other portions of his testimony.

Hardee in his testimony says:

"I did not close Minor's account at that time, but continued it "and charged interest on the indebtedness, expecting Minor to "settle his account."

Hardee's testimony. Record p. 97. Original p. 245.

His intention to treat the claim as a debt unpaid is made stronger by the fact that on December 14, 1877, Hardee writes to Minor as follows:

"You are due us to-day about $6,697, without interest from "December 1st."

"You have 8 b. c. on hand yet to go to your credit at $45.00 per "bale, $360.00. Balance still due $6.337.00 Now if you pay "$3,000 00 there will still remain a balance of $3,337.00 at your "debit, and for which we will have scarcely any security if we "give up or transfer the deed to the parties proposing to loan you "$3,000.00" * * *

And in a postscript to this letter he says"

"The only deed to property we have, which we value at all, is "the deed to the 400 acres at No. 12½ C. R. R."

Record p. 104. Original p. 263-264.

By reference to the extracts from Hardee's books showing his accounts with J. M. Minor on page of Record 113, original p. 284, the balance February 6, 1877, date of Minor's deed to Hardee, appears to be $3,882.30,following which are a number of current charges and credits to April 9,1877,at which time interest is charged and a balance entered of $3,815.71, which amount opens a new account on Record p. 114, and these balances are carried on with current charges and credits until March 28, 1878, when the account is made out in name of J. R. Thigpen.

Record p. 115. Original p. 286.

So when Hardee writes to Minor December 14, 1877, saying "you are due us to-day about $6,697," he included the amount which was the consideration of the deed of February 6, 1877, and which amount he says was paid by that deed.

We contend that Hardee's conduct as to this deed shows conclusively that it was intended to be a security for the debt and not in payment of it.

The question of intent is the controlling one in this case, and that is to be gathered not from the nature of the deed and the statement of

the parties only, but from the manner in which they treat the transaction.

This question has been fully discussed by Justice McCay of the Supreme Court of Georgia in the cases of Spencer vs. Steadman—49 Georgia, p. 133 (137-138)—and again by the same learned judge in the same volume in the case of Monroe vs. Foster—49 Georgia, p. 514 (518-519).

We quote from Judge McCay's opinion in the first case:

> "It is unquestionably sometimes difficult to determine what "was the real intent. Men having money to lend or debts to "secure, not unnaturally desire to put the debtor under as strict "and heavy terms as they can exact from his necessities, and "thus often when the real intent is *only security*, they obtain in- "struments having all the forms of a conditional sale. It is "therefore a settled rule that the mere form of the paper—the "words used—such as purchase, sale, repurchase, etc., if the real "intent be only to secure the payment of money, will not make "the instrument other than a mortgage: 4 Kent's Com. 144. "And equity will lean to the construction that will give to the "vender the right to redeem: 23 Pickering 529. In 6 Watts 131, "Judge Gibson says: It is too late to say that what was intended "to be a security for money may become a conditional sale by "the accidental form of the transaction, or that an agreement to "make it such in default of payment may not be relieved against, "or that a jury are not the proper judges of the intent."

49 Georgia, p. 138-139.

It is claimed by Hardee that he was in possession of this property by Minor's holding it and paying him rent, or collecting it as his agent. That is not the kind of possession that can be urged to strengthen his claim under his deed. It must be actual possession, not constructive.

49 Ga., p. 139-140.

> "Consent to be a tenant of the grantee is only another term of "the agreement and is not an act in *furtherance* and in pursuance "of the agreement indicating that it is in truth what it purports "to be."

Again Judge McCay in his opinion in Foster v. Monroe—49 Ga. 519—says:

> "It is perfectly settled that it is a question of fact for the "chancellor, or in this State for a jury to determine what was the "true intent of the parties, and that no mere words whether in "parol or in writing are conclusive. The whole transaction is to "be looked to and if upon the whole it appears that the loan of "money and security for its payment was in truth the purpose "and intent of the parties, it will be treated as such notwith- "standing very strong language may be used at the time to give "it a different appearance."

49 Ga, 519.

And we may add "notwithstanding very strong language" may be used afterwards to give it that appearance.

It is a significant fact, to which the attention of the court is called, that nowhere in the record is there a letter from Minor to N. A. Hardee's Son & Co. ~~that~~ (John L. Hardee so traded) Record p. 96. Original p. 242 Notwithstanding Hardee says, same page:

"I have all my letters of correspondence and books of accounts "with James M. Minor from the time of the fire, 1876, which oc- "curred about the 27th August, 1876."

Again, on p. 97, Hardee's testimony, he says:

"I think I have the letters of Minor up to the date of the filing "of the suit, and will produce them. Some important letters have "been destroyed."

Record p. 97. Original p. 244–245.

These letters were never produced, and their absence leaves unexplained Hardee's letters to Minor, above quoted.

If these letters were produced they might explain what Hardee meant when on November 30, 1877, he writes.

"We note you will turn over title to certain land to us as "security. If any of your creditors are going to press you, you "can deed us *all* you have, which we will hold as security for our "claim."

Record p 104. Original p. 262.

As well as the letter of December 14, 1877, referring to a debt which has been paid, as he contends, as being now due.

We have quoted as fully as a brief will permit from Hardee's testimony, accounts and letters, but a careful reading of his whole testimony, as it appears in the record, p. 96, 97, 98, 99, 100, 103, 104, 105, 106, 107, 113, 114, 115, 135, 136, 137 and 138, must carry with it absolute conviction that the deed of February 6, 1877, was intended to secure a debt and not to pay one.

If, as we trust we have shown, Minor's deed to Hardee was only a security for a debt, then it follows that Wilson, being a judgment creditor, has a right to redeem the land by paying off the indebtedness, so as to subject it to the payment of this debt.

2 Storys Eq. Jur. § 1023.

Jarvis vs. Burke, 59 Ga., 232, 234.

Judge Locke's decree, rendered May 3, 1884, held Minor's trust deed void and his deed to Hardee a security for debt only. This was a final decree, and there was no appeal therefrom.

Record p. 36. Original p. 89.

The appeal entered May 12, 1887, could not be from this decree, as it was entered more than two years after the entry of the decree.

No judgment or decree of a Circuit or District Court shall be received by the Supreme Court on appeal unless the appeal is brought within two years after entry of the decree.

Rev. Stat. U. S. § 1008.

This, therefore, brings us to a discussion of Judge Pardee's decree of December 12, 1887, confirming the master's report, and to which the appeal was entered.

FOURTH.

If the deed from Minor and wife to Hardee was in effect a security to Hardee, then what was Minor's indebtedness to him on this account when the master made his report?

The master reported that he found from the testimony of Hardee, taken December 20, 1884, that on 6th of February, 1877, J. M. Minor was indebted to John L. Hardee $4,000.62, and he states that this amount is obtained by taking from Hardee's books (N. A. Hardee's Son & Co.) the amount, which appears to be due February 6, 1877, viz., $3,882.30, and by adding to this the $118.50 which Hardee swears was due but not on the books.

Master's report. Record p. 42. Original p. 101.

This finding is directly supported by Hardee's testimony taken December 20, 1884, where he states "a statement of Minor's amount with "me shows that on the 6th day of February, 1877, according to the "books, he was indebted to me $3,882 30, but he owed me $118.32 be-"sides, which did not appear on the books at the time, and the total "amount which Minor was indebted to me on the 6th day of Febru-"ary, 1877, was $4,000.62."

Hardee's testimony. Record p. 137. Original p. 331.

It is also supported by Hardee's statement of account attached to his answer, showing the balance due February 6, 1877, to be $3,882.30.

Record p. 12. Original p. 24.

It is also supported by Hardee's books, extracts from which appear certified by the master in the Record p. 113, where the same balance appears February 6, 1877.

There is no contest as to the several amounts collected as rent or the dates.

Minor, in his testimony, says we were to pay rent $500 annually. All has been paid except a small balance.

Record p. 84. Original p. 210.

Hardee, in his testimony of December 20, 1884, says "the last credit "for rent was received October 10, 1884. The credit for November 1, "1878, and ending October 10, 1884, was for rent, except the excess "over $500."

Record p. 137. Original p. 332.

Hardee, again in his testimony, says: J. R. Thigpen paid $500 for rent in the fall of 1877 for rent of that year.

Minor paid $500 for 1879 and $500 for 1880.

Record p. 98. Original p. 247.

In Hardee's testimony of October 27, 1884, he says, evidently referring to rent, I have received as follows:

November 1, 1878	$ 500 00
November 1, 1879	500 00
November 1, 1880	493 30
November 1, 1881	400 00
November 1, 1882	500 00
November 1, 1883	500 00
October 10, 1884	500 00
	$3,393 30

Record p. 136. Original p. 329.

Add the $500 which he says Thigpen paid for 1877 and we have the amount of rent reported by the master.

Hardee, in his testimony of December 20, 1884, says J. R. Thigpen paid $1,000 on March 28, 1878. * * This $1,000 went to the credit of J. M. Minor. I bargained the place to Thigpen, he and Minor both being present.

Record p. 138. Original p. 333.

In his answer, he says: I received from J. R. Thigpen $1,000 and, upon his failure to pay balance, took the place back.

Record p. 7. Original p. 17.

It will thus appear that the master had Hardee's own testimony for every dollar of rent charged against the amount secured by this land.

The calculation of interest on these amounts was correctly made. Hardee's account showed that he had charged interest on the balance secured by the deed.

In answer to the exception to the master's report, claiming that the master erred in charging Minor's account with the $1,000 paid by Thigpen March 28, 1878, we say this amount was a profit to Hardee growing out of the land, and notwithstanding when it was paid, Thigpen expected it to be purchase money; yet, when he failed to make the other payment, it remained as rent for the time he held the place.

See Hardee's testimony. Record p. 138. Original p. 333.

The second exception to the master's report, where it is said he erred in charging the excess of each payment over the interest then due on the principal, and that the testimony showed it be a credit on the general unsecured debt of Minor to Hardee, exceptions—Record p. 43, original p. 104—is not well taken in fact; the amounts were rent and were necessarily charged against the amount secured by the deed.

CONCLUSION.

As there is no error, the decree should be affirmed.

RUFUS E. LESTER,
THOMAS P. RAVENEL,
LIVINGSTON KENAN,
Of Counsel for Appellee.